DOCUMENT RESUME

ED 242 080 EA 016 613

AUTHOR Whalen, Garry M.; And Others
TITLE Negotiations '84.
INSTITUTION New Jersey School Boards Association, Trenton.
PUB DATE 83
NOTE 107p.
PUB TYPE Guides - Non-Classroom Use (055) --
Legal/Legislative/Regulatory Materials (090)

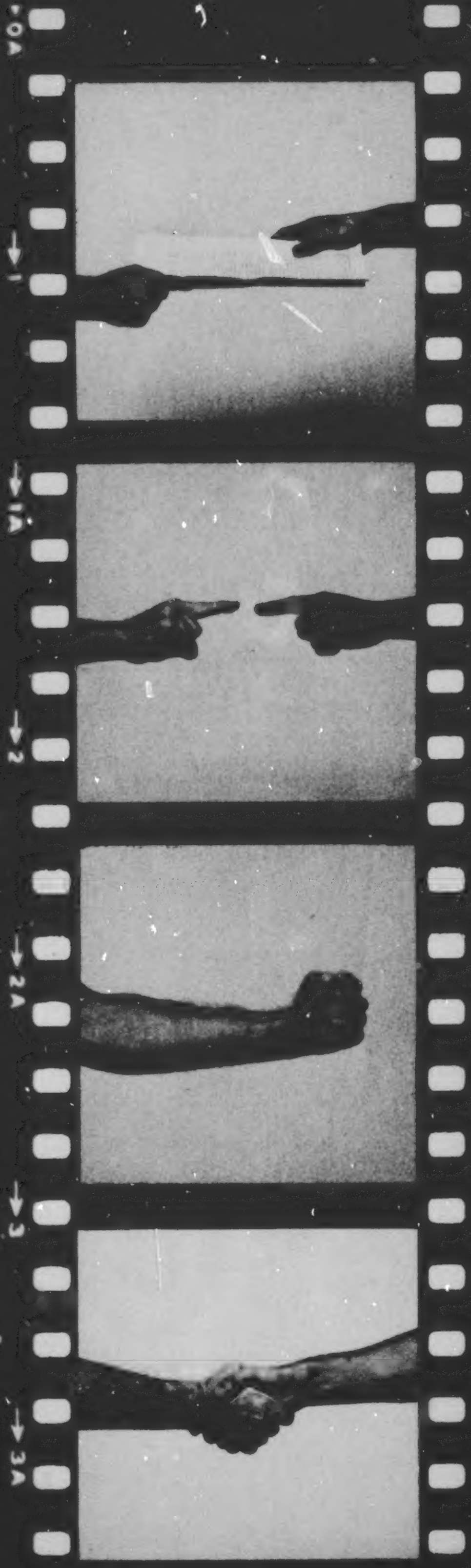
EDRS PRICE MF01/PC05 Plus Postage.
DESCRIPTORS Administrators; *Arbitration; *Board of Education Policy; *Collective Bargaining; Employer Employee Relationship; *Labor Legislation; Labor Relations; Merit Pay; Negotiation Agreements; Negotiation Impasses; Public School Teachers; *School Personnel; Teacher Associations; Teacher Salaries; Unions
IDENTIFIERS *New Jersey Education Association; New Jersey Principals and Supervisors Association; *New Jersey School Boards Association

ABSTRACT

This document provides an update on legal developments affecting negotiations between school boards and school district employees in New Jersey and discusses trends in union and board proposals and tactics. In the opening section, the available literature on bargaining is briefly reviewed. Section 2 defines the scope of negotiations for New Jersey's public sector and lists both mandatory and illegal topics. Section 3 addresses the question of bargaining with principals and supervisors; section 4 offers a lengthy analysis of the New Jersey Principal and Supervisors Association's Model Agreement for Supervisory Personnel. Sections 5 through 10 cover the following areas: the sixth teaching period clause; a board policy on negotiations; the many dimensions of the merit pay issue; negotiating salary guides; collective bargaining and educational excellence; and decisions affecting negotiations. Section 11 contains a selected bibliography. The twelfth and final section--an article-by-article New Jersey School Boards Association analysis of the New Jersey Education Association's sample agreement for 1984-85--comprises over half the document. The agreement's 34 articles cover a wide range of issues, including grievance procedures, salaries, classroom control and discipline, and personal and academic freedom. (JBM)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED242080



U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Curt Warey

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

EA 016 613

Negotiations '84

by Garry M. Whalen • Fred Baron • Marc Gaswirth • Esther R. Strassman • Curt Wary

A PUBLICATION OF THE NEW JERSEY SCHOOL BOARDS ASSOCIATION
315 West State Street, P.O. Box 909, Trenton, New Jersey 08605

Copyright© 1983 New Jersey School Boards Association

This book may not be copied in whole or in any portion by any means without the express written consent of the New Jersey School Boards Association.

CONTENTS

Introduction: Resources for Bargaining 5
The Scope of Negotiations 6
Bargaining with Principals and Supervisors 9
An Analysis of the PSA Model Agreement for Supervisory Personnel 12
The Sixth Teaching Period Clause 34
A Board Policy on Negotiations 35
The Many Dimensions of the Merit Pay Issue 38
Negotiating Salary Guides 41
Collective Bargaining and Educational Excellence 44
Decisions Affecting Negotiations 46
A Selected Bibliography 49
NJSBA Analysis of the NJEA Sample Agreement 51

Contents of the NJSBA Analysis of the NJEA Sample Agreement for 1984–85

Preamble 52
Article I. Recognition 52
Article II. Negotiation of Successor Agreement 53
Article III. Grievance Procedure 54
Article IV. Teacher Rights 60
Article V. Association Rights and Privileges 63
Article VI. Teacher Work Year 65
Article VII. Work Hours and Work Load 66
Article VIII. Nonteaching Duties 70
Article IX. Teacher Employment 71
Article X. Salaries 73
Article XI. Teacher Work Stations 74
Article XII. Promotions 76
Article XIII. Accredited Evening High School—Summer School—Home Teaching and Federal Programs 77
Article XIV. Teacher Evaluation 78
Article XV. Fair Dismissal Procedure 81
Article XVI. Complaint Procedure 84
Article XVII. Teacher Facilities 85
Article XVIII. Teacher-Administration Liaison 86
Article XIX. Instructional Council 87
Article XX. Sick Leave 88
Article XXI. Temporary Leaves of Absence 89
Article XXIII. Extended Leaves of Absence 90
Article XXIV. Sabbatical Leaves 92
Article XXV. Professional Development and Educational Improvement 93
Article XXVI. Supervision of Student Teachers 95
Article XXVII. Protection of Teachers, Students and Property 96
Article XXVIII. Maintenance of Classroom Control and Discipline 98
Article XXIX. Insurance Protection 99
Article XXX. Personal and Academic Freedom 100
Article XXXI. Books and Other Instructional Materials and Supplies 101
Article XXXII. Deduction From Salary 102
Article XXXIII. Miscellaneous Provisions 103
Article XXXIIV. Duration of Agreement 104
Article Representation Fee 105

INTRODUCTION:
Resources for Bargaining

Negotiations 84 is the most timely publication available to the school board negotiator. It provides an update on legal developments affecting negotiations, and discusses trends in union and board proposals and tactics. It has proven an invaluable tool for the board member or administrator who represents his or her district at the bargaining table.

The best comprehensive guide to school district labor relations is *Collective Negotiations,* Volume 5 in the School Board Library Series. This book addresses, in 13 chapters, the bargaining process from start to finish, with special chapters on preparation, tactics, mediation, factfinding and strikes. It provides a fine introduction to the process for the new board negotiator, and an excellent review for the experienced team member.

Other sources of information are also available from your Association. *The Public Employment Relations Law,* Volume 6 in the School Board Library Series, describes in layman's terms all of the powers of PERC and all of the rights and obligations the bargaining law grants to school boards, unions and school employees. Unfair practices, impasse procedures, injunctions and the scope of negotiations are explained in detail.

Administering the Negotiated Agreement, Volume 7 in the same series, is a comprehensive guide to grievance handling and contract administration. It is also very useful in negotiations because of its careful discussion of such topics as grievance procedures (with sample language), rules for contract language interpretation, and the legal framework for grievances and arbitration.

Costing Out the Labor Agreement has just been revised and reissued by NJSBA. It shows, through descriptions and examples, how to calculate the cost of salary and benefit improvements. This book takes the uncertainty out of the financial end of bargaining, and helps you guarantee that the actual cost of your settlement is exactly what you thought it was.

We also recommend *An Analysis of Teachers' Contracts in New Jersey 1982-83/1983-84* as your initial source of information for preparing for negotiations, with data from over 500 school districts on salaries and selected fringe benefits, and discussion of trends in union demands across the state. *Collective Bargaining Data 1983-84/1984-85,* available on February 1, 1984, will contain salary and fringe benefit data from nearly 400 1983-84 teacher contracts.

Another excellent resource are prior issues of the annual *Negotiations* publication. Consider the following articles from recent editions:

Negotiations 83
- Personal Leave
- Payment for Unused Sick Leave
- Bargaining Units: Consolidation, Severance and Additions
- Salary Differentials *or* Where Have All the Science and Mathematics Teachers Gone?
- Teacher Evaluation: The Current State of the Law

Negotiations 82
- Teacher Salary Guides: The State of the Art
- Communicating with the Public During Negotiations
- Basic Bargaining Errors
- The Rituals of Bargaining

Negotiations 81
- Agency Shop Negotiations
- An Analysis of Selected Contract Clauses (Recognition, Transfer Procedures)
- Opening Schools During a Strike

Negotiations 80
- An Analysis of Selected Contract Clauses (Sabbatical Leave, Tuition Reimbursement)
- The Use of Professional Negotiators
- Employee Relations in the Context of the Labor Agreement

Our regular column in *School Leader,* "Labor Lookout," provides timely information and advice on practical bargaining problems. In the past year, the column has addressed salary guide construction, how to determine management goals for negotiations, and how to present your proposals effectively.

Finally, *Negotiations News/School Law Reporter* is a bimonthly update on PERC decisions, arbitration awards, and court cases that affect collective bargaining and school operations.

Each of these publications has proven useful to school boards. But printed instruction and advice cannot guarantee a successful conclusion to negotiations. The criteria for that achievement remains experience, training, stamina and fortitude by the board's negotiating team. Those qualities are essential to reach a labor agreement that is fair to the board, fair to teachers, and fair to the community and the children of the district. This is true whether a district employs a professional negotiator, or uses a board member or administrator as its spokesperson at the table.

Good luck in negotiations.

Garry M. Whalen
Director of Labor Relations

©1983 NJSBA

THE SCOPE OF NEGOTIATIONS

Since the 1968 enactment of the Employer-Employee Relations Act, an active interaction between the Legislature, PERC, and the courts has resulted in a continuously evolving definition of the scope of negotiations for New Jersey's public sector. The state Supreme Court, in fulfilling its responsibility to review disputes on appeal from PERC or the lower courts, has become the principal actor in defining the boundaries of negotiability.

In its decisions, the Supreme Court has been guided by its belief that the scope of negotiations in the public sector must be more limited than that of the private sector. The Court has frequently stated that the public employer, as a government entity, has special responsibilities to the public not shared by private employers: the public employer has the unique obligation to formulate and implement public policy.[1] The Court believes that, in our democratic system, the public employer must retain accountability to the public and that matters of public policy are properly decided by the political process and not by collective negotiations. Thus, in *Ridgefield Park,* the Court interpreted the Act as providing only two categories of negotiations for most public employees: mandatorily negotiable terms and conditions of employment, and illegal, non-negotiable matters of governmental policy.[2]

To determine whether a subject is negotiable, the Court will balance the legitimate interests of the employer and the employees. The most recently developed test of negotiability, defined in *Local 195* but evolving from prior court decisions, is three-pronged. To be negotiable a subject

- must intimately and directly affect the work and welfare of public employees;
- must not be preempted by a statute or regulation which speaks in the imperative and leaves nothing to the discretion of the public employer; and
- must not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy.

When the subject intimately affects employees' working conditions but does not meet the other two criteria, it is non-negotiable.

The Supreme Court has also held that non-negotiable managerial prerogatives may not be submitted to *binding arbitration.* An arbitrator's decision is intended to be final and binding on the board; if arbitration of management prerogatives were permitted, the arbitrator, a private individual not accountable to the public, could become the framer of public policy. Disputes arising out of the application of managerial prerogatives may, however, be submitted to advisory arbitration, as this type of decision does not result in a final determination of public policy. The Court, in *Bernards Township,*[3] described the advisory arbitration process as protecting employees' interests without encroaching on the employers' authority to set governmental policy.

The Court's decisions have established the boundaries of the arena in which PERC can render specific scope determinations; court decisions have also spurred attempts to redefine negotiability through legislative mandate. For example, the judicial determination that, under the Act, a public employer's right to discipline its employees could not be subject to negotiations or arbitration,[4] resulted in a 1982 legislative amendment. The amendment, enacted after a stormy legislative history, specifically established the negotiability of disciplinary review procedures, as long as the procedures agreed upon by the parties were not inconsistent with alternate statutory appeal procedures and did "not provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service law." Thus, the scope of negotiations was legislatively redefined; however, the appropriate application and interpretation of this recent amendment to the Act is still being developed by PERC and the courts.[5]

Mandatory Topics

As of September 1983, Court decisions and PERC determinations have held that the following are *mandatory topics of negotiations.* Remember—you must negotiate these issues but you do not have to concede unless you wish to do so.

Advisory arbitration for the application of management prerogatives to individual employees

---

[1] *In the Matter of Local 195, IFPTE, AFL-CIO v. State of New Jersey,* 88 *N.J.* 393, (1982); *Paterson Police P.B.A. Local No. 1 v. Paterson,* 87 *N.J.* 78 (1981); *Ridgefield Park Education Association v. Ridgefield Park Board of Education,* 78 *N.J.* 144 (1978).

[2] Negotiations involving police and firefighters are controlled by a specific statute which specifically provides for a third category of negotiable topics, termed "permissive subjects." The Court in *Paterson, supra,* restricted the permissive category to preclude negotiations on matters which would place "substantial limitations" on a public employer's policy-making authority.

[3] *Bernards Township Board of Education v. Bernards Township Education Association,* 78 *N.J.* 311 (1979).

[4] *City of Jersey City v. Jersey City Police Officers' Benevolent Association,* 179 *N.J. Super.* 137 (App. Div., 1981), cert. denied 89 *N.J.* 433 (1982); and *State of New Jersey v. Local 195, IFPTE and Local 518, SEIU,* 179 *N.J. Super.* 146 (App. Div., 1981), cert. denied 89 *N.J.* 433 (1982).

[5] See *Lower Township Board of Education v. Lower Township Elementary Teachers Association,* Docket No. A-3315-80T1, unpublished App. Div., December 8, 1982; *Bergen County Law Enforcement Group, Superior Officers, PBA Local No. 134 v. Bergen County Board of Chosen Freeholders,* Docket No. A-2873-81T2, unpublished App. Div., January 7, 1983; *Willingboro Board of Education and Employees Association of Willingboro Schools,* PERC No. 83-147, 9 *NJPER* 14158.

©1983 NJSBA

After school teacher-only workshops
Agency shop
Committees on non-negotiable topics that have merely advisory authority
Compensation
Discipline procedures consistent with statutes
Duty free lunch
Evaluation procedures that do not contravene statute or administrative code
Fair dismissal procedures
Fringe benefits, including benefits for RIFfed teachers if incorporated into the contract
Grievance procedures
Holidays
Holdback of salary
Hours
Insurance, including disability income
Job security (for employees not covered by tenure)
Length of the collective bargaining agreement
Merit pay
Payment for unused accumulated sick leave
Past practice
Personal leave
Personnel file, access to
Physical and mental exam, beyond statutory authority
Physical facilities and working conditions, smoking in teachers' lounge
Posting procedures
Preparation periods
Procedures for selection and promotion of department chairpersons, other positions
Reduction in force, notice provisions
Representation for teacher conferences, other meetings
Sabbatical leaves
Safety issues
Salary guide, initial placement, credit for experience
Sick leave, above the statutory minimum
Teacher-pupil contact time
Teaching periods, number of
Transfer and assignment procedures
Union business, time off for, use of prep period for
Tuition reimbursement
Vacations
Workload
Work day, length of
Work year, length of[6]
Zipper clause

Illegal Topics

The following items have been determined to be *illegal topics of bargaining because they involve matters of educational policy or inherent management prerogatives:*

Absenteeism and tardiness policies
Academic calendar
Affirmative action plans
Application of evaluation criteria
Assignment
Audio-visual equipment, use of
Budget formulation
Class size
Contact time for students
Curriculum
Decision to assign bus, cafeteria, corridor and playground supervision
Decision to reschedule snow days in teacher vacation period
Decision to go to split sessions
Evaluation, advance notice of observation and who evaluates
Extracurricular activities, assignment of
Facilities relating to the education process
Impact[7] of non-negotiable decisions
Lesson plans, format of and scheduling of submission
Productivity studies
Qualifications for employment
Qualifications for increment
Qualifications for promotion
Sick leave, verification of
Staffing, number of employees
Student safety
Student testing
Subcontracting
Supervision, of employees by department chairperson
Transfer, decisions and criteria
Use of teacher aides

---

[6] This is generally mandatory for public employees, however, for teachers it is mandatory only to those days in excess of the 180 minimum required for state aid.
[7] Impact was declared illegal under *Woodstown-Pilesgrove.*

The following items have been held to be *illegal topics of bargaining because they contravene specific statutes or regulations:*

Composition of the bargaining team

Decision to RIF

Discipline, procedures ending in binding arbitration for employees with protection under the tenure law or other statutory appeals procedures

Early retirement incentives

Evaluation criteria

Extended sick leave

Impact of RIF on remaining teachers, and on RIFfed teachers

Maintenance of membership clauses

Non-renewals

Parity

Pensions

Procedures for RIF

Religious leave (paid), if not charged to general personal leave or vacation

Seniority provisions inconsistent with Title 18A

Sick leave, use of for other than statutory purposes

Student grievance procedures

Sunshine bargaining as a precondition to negotiations

Withholding of increments

©1983 NJSBA

BARGAINING WITH PRINCIPALS AND SUPERVISORS

Introduction

In New Jersey, and several other states, the statutes governing public sector collective bargaining have thrown the same mantle of protection over administrators, supervisors and managers to organize and bargain with their employers over terms and conditions of employment as exists for the rank and file employees whom these administrators supervise. This is an anomaly. Managers and supervisors have no such protected right in the private sector.

The common perception in the private sector is: Management is management and labor is labor, and a clearly distinguishable line exists between them. This common perception coexists with and reinforces a relatively clear and relatively unambiguous sense of identity and associated loyalty. That is, managers and supervisors know that they are, or are perceived to be, "management," and the rank and file workers know that they are "labor." And to a great extent, they behave that way.

This is not to say that some managers in the private sector do not feel powerless or that many first line supervisors do not feel themselves to be uncomfortably "in the middle." But these individuals must play their parts in the system and the system works.

We are concerned here, not with the public sector as a whole, but with public schools. Public school administrators are supposed to direct and supervise the work of all other public school employees. The majority of these employees are teachers. Teachers, like administrators, are "professionals." They frequently refer to themselves as "educators." Administrators are former teachers who live and work with teachers daily. They are products of the same professional schools and the same educational sub-culture. They are subject to, and beneficiaries of, the same statutes and regulations conferring tenure and retirement benefits, and setting forth certification standards.

Bargaining Power and Administrator Unions

When administrators and supervisors form themselves into unions and assert their right to bargain collectively with the boards who employ them, they embark upon a process for which they are ill-fitted. Their bargaining units vary in size from small to miniscule. The traditional gaining of strength through numbers by unionization and collective bargaining simply does not work for administrators. Therefore, they find themselves with the forms and trappings of union organization and, by their own choice, going through the motions of collective bargaining, without the collective power which, in theory, offsets the employer's natural power advantage and makes the system work.

To a large extent, collective bargaining is about power. Underlying the process is the implicit threat, or at least the possibility, that each side will do something unpleasant or damaging to the other.

Ultimately, the most significant power that a union has is a credible threat to disrupt the smooth operation of the enterprise. This may consist of picketing, "work-to-rule" slowdowns, demonstrations at board meetings, or strikes. It is obvious that, in these terms, administrators' unions have absolutely no power. They may have considerable influence and persuasiveness, but they have no power. The fact is that, in negotiating with administrators' unions, boards of education have such a preponderance of power that they are virtually able to dictate the terms of an agreement. If the board holds to its position tenaciously for a long enough period, the union must come around and accept such terms as the board is willing to grant.

If it is true that boards are able to impose their will upon their administrative unions, it is also true that, usually, they do not do so. Boards should use their power advantage judiciously. It is not in the interests of boards to humiliate the organizations representing their administrators and to diminish the status of these administrators in the eyes of other employees.

Negotiations with administrators should be conducted, even to a greater extent than with teachers, with patience, circumspection, and a high level of mutual respect and courtesy. This patience and courtesy will soften and ultimately render acceptable the board's continuing and firm rejection of all proposals which would have the effect of diminishing the discretion of the board and superintendent in making management decisions or of institutionalizing a decision-making role for the administrators' union in the management of the district. Boards should be firm in their opposition to such proposals but, at the same time, they should be genuinely concerned that administrators be appropriately compensated, both economically and psychically.

Too frequently a board, coming away from negotiations in which it feels that the teachers and other employees have "extorted" a 9% increase in salary and benefits, will resolve to win one small victory and make some PR points by holding the "fat cat administrators" down to 5% because they have the power to do so. It may be that the objective realities in a district make a relatively low settlement for administrators appropriate once or twice, but, in the long run, boards should want to foster the feeling among administrators that they are well and fairly compensated and that, in appropriate ways, their special status is recognized. It is also important, if boards wish their administrators to be taken seriously by other employees, that these employees perceive that "middle management" is recognized and compensated proportionately to their longer work time and increased responsibility.

Does this mean that the board should accede to exaggerated economic demands? Not at all. A balance must be struck, and a wise board and appropriately instructed negotiating team will know where that balance is.

Why Administrators Unionize

If administrators' unions have no power, aren't administrators intelligent or informed enough to recognize this fact? And if they do recognize it, why do they organize and engage in bargaining? It is tempting to answer the first question with a simple "no" and thus render the second question moot. The reality is more complex.

First, confronted by the spectacle of boards negotiating directly with teachers' unions over terms and conditions of employment and, in many cases, infringing upon the range of discretion administrators traditionally had in the management of their schools, they perceive that their subordinates have been permitted to "go over their heads" in dealing directly with boards and superintendents. This has made them feel, more than before, powerless and frustrated. How can they recover the authority and relative position they believe that they once had? Probably, in their view, they can't. But how can they get a piece of the action? The tempting and deceptively easy answer is to organize and bargain themselves.

A second reason is that administrators have a problem with identity. They don't know who they are. We have alluded to the fact that they are former teachers and that they see themselves sharing the "professional" status of "educators" with them. Moreover, there is, in the educational sub-culture, a long tradition of collegiality, which now co-exists uneasily with collective bargaining. If collective bargaining has done so much for the teachers whom they supervise and direct, and whom they closely resemble in attitudes and values, why not for them?

We have presented numerous training programs in contract administration to groups of administrators and were initially surprised and disappointed that many of the questions raised by the administrators during these presentations concerned how to assert their own rights under their own contracts, rather than their role in handling the grievances of teachers and other subordinate employees. We are no longer surprised, but remain somewhat disappointed.

Principals also organize because they, being in the middle, are held at arms length by the teachers and perceive that they have the respect of neither their subordinates or their superiors, the boards for whom they work. To some extent, and in some districts, this has been a result of insensitivity of boards and superintendents.

The Limits of Administrator Bargaining

Whatever the reasons principals organize, the fact is that, in a large number of districts, they do, and boards must negotiate with them. Boards should keep in mind the fact that the negotiated agreement should deal, as narrowly and specifically as possible, only with the terms and conditions of employment of members of the bargaining unit. It should *not* be seen as a vehicle for defining the management role and discretion of administrators with respect to other employees; nor should it deal in any way with the terms and conditions of employment of other employees.

The authority and functions of administrators do not flow from and cannot be created by their collective bargaining agreement. They flow from and are created by state laws, the rules and regulations of the State Board of Education and the Commissioner, the policies of the boards of education, the administrative directions of the superintendent, and, finally, by the nature and traditions of the positions they occupy. Boards should not allow collective bargaining agreements to infringe upon these.

Administrator Bargaining and the Management Team

Much is said about a "management team concept." Boards frequently tell administrators that they constitute, with the board and superintendent, a management team, who collectively and cooperatively run the district in such a way as to produce, facilitate and enhance the highest quality education for the students that the schools serve. Administrators like to hear this; and they should like very much to believe it. What infuriates and frustrates them is hearing it, both at the bargaining table and elsewhere, and perceiving that, in fact, they have only a superficial or nominal role as part of the management team and that they have been largely cut out of the action.

What can boards do about this? They can, and should, clearly delineate the authority of administrators to run their schools, hold them accountable for the proper exercise of that authority, and then stay out of their way and let them do it. Boards should avoid the "Haroun al Rashid syndrome." Haroun al Rashid was the caliph, in the Arabian Nights, whose custom it was to go among his subjects in disguise and right all wrongs and correct all the injustices inflicted by his judges, governors and other officials. However laudable the intent, this obviously undermines the authority and effectiveness of subordinate managers. Boards should be willing to let a few sparrows fall without intervening other than by monitoring the processes by which these events are handled.

Secondly, boards should provide opportunities for administrators to participate actively, in an advisory capacity, and to have some input in decisions on all matters touching upon the operation of the schools in which they can be expected to have some expertise and for the implementation of which they can and should be held accountable. This includes, as a minimum, such things as curriculum, student discipline procedures, criteria and procedures for evaluation of teacher performance, creation and implementation of programs to improve teacher attendance, preparation of board proposals in teacher negotiations, and advice to the board on the probable effect of contract proposals of teachers' and other unions.

It is important that mechanisms exist, and that they be perceived to exist by everyone in the school district, for administrators, as administrators, to have a voice in these matters. Here a distinction should be made. Administrators, as managers, should have a maximum opportunity to participate in consideration of these matters. Their union should have *no role* in such deliberations. At most, the existence of advisory committees might be addressed in a contract, although it is prefer-

©1983 NJSBA

able that they not be the product of collective negotiations. The recognition of the importance of giving administrators input to appropriate decisions of boards should be seen as flowing freely from the enlightenment of the board and superintendent and not as the creature of the collective bargaining agreement. This is a difficult distinction to draw, but it must be drawn and strictly adhered to.

Finally, the board should go out of its way to find occasions to express its recognition and appreciation of the importance of administrators, and—let us say it—the board's favor.

Conclusion

Where these principles are followed, the unionization of administrators can be avoided where it has not yet occurred, and negotiations can be confined to salaries, benefits and a very narrow range of other terms and conditions of employment where unionization has occurred. Under these conditions, administrators can constructively be part of a management team and their effectiveness and value to the district can be enhanced.

Finally, a word about parity, or "me too" provisions. More often than not, the benefits, and less frequently, the salaries of administrators are determined by what has been negotiated with other units. The board may wish to give all employees the same levels and kinds of benefits, but, if it does, these should be spelled out in the administrators' contract, which should make no reference to the contracts of the other employees. Ideally, the salary and benefits of administrators should be determined by the board, in negotiation with the administrators' union, without regard to the salary and benefits negotiated with other employes. There is no law of nature, or of collective bargaining, which says that the board could not negotiate with its administrators some form of benefit which is not provided to other employees. In fact, it might not be a bad idea to do so. This could be a relatively inexpensive outward sign of the respect accorded to and the special status of administrators.

What all of this boils down to is this. If boards wish their administrators truly to be management, they must treat them as management. This does not require the abdication of boards' powers or a soft line in negotiations. It does require that, in negotiations and elsewhere, boards make it clear that they recognize and support their administrators' special status as individual managers, hold them individually and collectively accountable for a high level of performance, and reward them appropriately. It is equally important that other employees, but especially teachers, understand that this is the case.

©1983 NJSBA

AN ANALYSIS OF THE PSA MODEL AGREEMENT FOR SUPERVISORY PERSONNEL

A thorough examination of supervisory bargaining in New Jersey would not be complete without an analysis of the Principal and Supervisors Association's "Model Agreement." Each year, this publication has analyzed the NJEA's "Sample Agreement" as a practical guide in analyzing your current agreement as well as union proposals in bargaining (see p. 51.) This analysis will, hopefully, serve the same purpose when bargaining with your supervisors.

As one might expect, there is some measure of duplication in the language in the PSA and NJEA "ideal agreements" and these similarities will be noted and references made to the NJEA Sample Agreement for further analysis. However, there are a number of sections in the PSA Model Agreement which are either unique in themselves or become unique in the context of a supervisory contract. These sections will be the subject of a more extensive analysis.

The format of this analysis will follow that of the NJEA Sample Agreement. On the left of each page appears the text of the PSA Model Agreement. On the right of each page appears our commentary.

Article I, *Membership*

A. Unit Membership

In accordance with Chapter 123, Public Laws of 1974, the Board recognizes the ______________________, hereinafter known as "the Association," as the exclusive and sole representative for the collective negotiation concerning the terms and conditions of employment for all certified and non-certified personnel, whether under contract, on leave, on a per diem basis, employed, or to be employed by the ____ ______________________, hereinafter known as "the Board," including only: [All supervisory titles, such as Principals, Assistant Principals, Coordinators, Directors, Supervisors, and any new supervisory title which shall be established by the Board.]

A. Unit membership should be expressly limited to supervisory personnel defined by the law as having the power to hire, discharge, discipline or effectively recommend the same. Directors, principals and assistant principals would fit this definition while department chairpersons might, depending upon their ability to effectively recommend hiring, firing or discipline. However, a single bargaining unit including these titles would **not** be appropriate where the principal evaluates the assistant principals, chairpersons, etc. and where it can be demonstrated that an actual or potential substantial conflict of interest exists. The law prohibits superintendents/administrative principals and assistant superintendents from inclusion in any bargaining unit. The board secretary/business administrator whose duties include involvement in the budget process for negotiations and the setting of negotiations settlement parameters should be excluded as a confidential employee. Other employees whose responsibilities involve personnel and labor relations on a routine basis are also normally considered confidential employees and thus, excluded as well.

B. Definitions

For purposes of clarity, terms crucial to the interpretation of this contract are listed below:

1. Employee

When used hereinafter in this Agreement, this term shall refer to all professional supervisory employees represented by the Association in the negotiating unit as above defined, and references to "males" shall include females.

[2., 3., Etc.]

B. Paragraph B seeks to ensure that all unit employees are treated identically under the contract. However, there may be clauses in a contract where a board wants to make certain distinctions between, for example, a department chairperson and a district-wide administrator. The important point to remember, whether or not you have paragraph B, is to specifically state when distinctions are to be made as to the application of a particular clause to different job titles.

Article II, *Negotiation Procedure*

A. Deadline Dates

The parties agree to enter into collective negotiations over a successor agreement in accordance with Chapter 123, Public Laws of 1974, in a good faith effort to reach agreement on all matters concerning the terms and conditions of employment of supervisory personnel. Negotiations shall begin no later than [November 1] and no earlier than [October 15] of the calendar year preceding the calendar year in which this agreement expires.

Negotiations shall commence with a meeting at a mutually satisfactory place within 15 days after receipt of a proposal, unless the Board and the Association mutually agree to an extension of time.

A. PERC's rules and regulations specify that this year's starting date for negotiations is December 7 (120 days prior to the budget election date). The parties may agree to start earlier or later than that date. Generally, we advise boards not to agree to a starting date earlier than that established by PERC. Since supervisory negotiations often do not begin in earnest until after the teachers settle, agreeing to an early starting date would seem unwise. (For a further discussion see "When to Start Bargaining" in **Negotiations '81**).

The second paragraph reduces a board's flexibility by imposing a time constraint for considering proposals.

B. Negotiating Team Authority

Neither party in any negotiations shall have control over the selection of the negotiating representatives of the other party. The parties mutually pledge that their representatives shall be clothed with all necessary power and authority to make proposals, consider proposals and make counterproposals in the course of negotiations.

B. The law specifies that it is an unfair practice to interfere in the selection of the other parties' negotiations representative and thus it is unnecessary to restate this in the local agreement. While the second sentence is defining the authority of the negotiations representatives, it should also state that the parties' representatives have authority only to reach a tentative agreement and that the full board and association membership reserve the right to ratify or reject any tentative agreement.

C. Maintaining Current Benefits

Except as this Agreement shall hereinafter otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement shall continue to be so applicable during the term of this Agreement. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce or otherwise detract from any employee's benefits existing prior to its effective date.

C. The intent of a maintenance of benefits or "past practice" clause is to freeze in place all rights or benefits which exist not only in the contract, policy or regulation, but in district practice as well. The danger is that it is difficult, if not impossible, to keep track of all the practices which may have developed in the district over the years. As suggested in the analysis of the NJEA Sample Agreement, the union seeking this clause should be asked to specify which rights and benefits it seeks to guarantee by this clause. If your contract already contains this clause, try to have it removed or, failing that, seek to insulate it from arbitration.

©1983 NJSBA

D. Modification—Understanding of Parties

This Agreement incorporates the entire understanding of the parties on all matters which were or could have been the subject of negotiations. During the term of this Agreement, neither party shall be required to negotiate with respect to any such matter whether or not covered by this Agreement and whether or not within the knowledge or contemplation of either or both of the parties at the times they negotiated or executed this Agreement.

This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.

This Agreement shall be effective as of ____________________________, and shall continue in effect until ____________________________, subject to the Association's right to negotiate over a successor agreement, as provided herein.

D. Paragraph D has been termed a "fully bargained" provision since it would prevent either party from attempting to reopen negotiations over any issue that was or could have been raised during negotiations for this agreement. Such language is actually advantageous to a board as a means of barring union attempts to bargain mid-contract. The remainder of the clause is standard language which should be retained.

Article III, *Grievance Procedure*

A. Definition

The term "grievance" means a complaint or claim that there has been an improper application, interpretation or violation of any term or provision of this contract, administrative decisions, board policy or state statute affecting a member or group of members.

A. The language ". . . affecting a member or group of members" is considerably broader than the mandatory definition of a grievance established by the State Supreme Court in **Township of West Windsor, 78 N.J.** 98 (1978). The definition should be limited to ". . . affecting employees' terms and conditions of employment." (For a complete discussion of the possible consequences of agreeing to a broad definition of a grievance, see p. 55 of our analysis of the teachers' agreement.)

B. Purpose

The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may from time to time arise affecting employees. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

B. Arbitrators' eyes light up when they see this language since it grants them the authority to fashion an "equitable" award. If a purpose must be stated, it should be to resolve differences concerning the rights of the parties regarding terms and conditions of employment of the employees covered by the contract. The second sentence should be retained.

C. Procedure

1. Filing a grievance

A grievance may be filed by an individual member, a group of members or by the Association, either in its own name or as the representative of a group or class whose individual signatures shall not be necessary. Any grievance must be lodged at the proper initiating level within [ninety (90)] calendar days of the happening of the event.

C.1. For a discussion of who may file a grievance, see p. 56 of our analysis of the teachers' agreement. While there must be a time limit for filing a grievance, 90 days is an excessive amount of time. Will anyone be able to accurately remember the facts of an event which may have occurred three months ago?

2. Failure to communicate a decision

Failure at any step to communicate the decision on a grievance within the specified time limitation shall constitute acceptance of a grievance as sustained. Failure to appeal an answer which is unsatisfactory within the specified time limitations shall be deemed to constitute an acceptance of such response as dispositive.

C.2. Since the grievant and/or the union is contending that their rights were violated, their failure to pursue the grievance within the prescribed time limits should result in a dismissal of the claim. However, a failure by management to meet time limits should not equate to an admission that a violation of rights occurred. Typically (and justly), when management does not respond on time, the grievance proceeds to the next level of the grievance procedure.

3. Informal attempt to resolve a complaint

An individual who has a complaint shall discuss it first with his immediate supervisor in an attempt to resolve the matter informally. However, if the complainant is the Association, the initial discussion shall be at the level of the Superintendent; and, in such event, if the problem is not resolved to the satisfaction of the Association within [fourteen (14)] calendar days after the conclusion of the discussion, the procedures prescribed in the subsections of this section shall become applicable.

C.3. The first sentence encouraging informal resolution of a grievance should be retained as sound personnel policy. A board may or may not want to bypass an immediate superior with respect to grievances where the union is the complainant. Unless the parties have agreed to an excessive time limit for filing a grievance (see discussion above), the grievant or union will not have the luxury of two full weeks to decide whether or not to file a grievance.

4. Level one—Immediate Superior

If, as a result of the discussion, the matter is not resolved to the satisfaction of the complainant within [seven (7)] calendar days, he shall set forth his grievance in writing to the immediate superior, specifying:

a. the nature of the grievance;
b. the nature and extent of the injury, loss or inconvenience;
c. the result of the previous discussion;
d. his dissatisfaction with decisions previously rendered.

The immediate superior shall communicate his decision to the grievant in writing within [seven (7)] calendar days of receipt of the written grievance.

C.4. Requiring specific information forces the grievant to focus on the issue giving rise to the grievance (which sometimes results in its resolution) and also discourages attempts to modify or change the grievance mid-way through the grievance procedure. However, the one piece of information which should not be requested is (d.). Having the grievant report dissatisfaction with prior decisions allows the grievant to **interpret** the superior's response. This only serves to place the superior in an awkward position and to increase the chances that the real issue in dispute may be muddled. In lieu of (d.), have the grievant attach a copy of the superior's decision. Finally, the grievant should also be required to state the exact clause, policy or administrative decision that is being grieved.

Seven calendar days does not provide much leeway in responding to a grievance. Check with the administrators involved to ascertain how much time they require.

5. Level two—Superintendent of Schools
The grievant, no later than [seven (7)] calendar days after receipt of the immediate superior's decision, may appeal this decision to the Superintendent of Schools. The appeal to the Superintendent must be made in writing, reciting the matter submitted to the immediate superior and his dissatisfaction with the decisions previously rendered, as specified above. The Superintendent shall attempt to resolve the matter as quickly as possible, but within a period not to exceed [fourteen (14)] calendar days. The Superintendent shall communicate his decision in writing to the grievant and the immediate superior.

6. Level three—Board of Education
If the grievance is not resolved to the grievant's satisfaction, he, no later than [seven (7)] calendar days after the receipt of the Superintendent's decision, may request a review by the Board of Education. The request shall be submitted in writing through the Superintendent, who shall attach all related papers and forward the request to the Board of Education. The Board, or a Committee thereof, shall review the grievance and shall, at the option of the Board, hold a hearing with the grievant and render a decision in writing within [thirty-five (35)] calendar days of receipt of the grievance by the Board.

7. Level four—Arbitration
If the decision of the Board does not resolve the grievance to the satisfaction of the grievant, notice of intention to proceed to arbitration shall be given to the Board through the Superintendent within [fourteen (14)] calendar days after the receipt of the decision which is being appealed.

The grievance not resolved by timely resort to the foregoing procedure shall be subject to arbitration initiated and conducted under the rules of the N.J. Public Employee Relations Commission and/or the American Arbitration Association.

The arbitrator shall limit himself to the issues submitted to him which fall within the scope of the contract. He can add nothing to, nor subtract anything from, the Agreement between parties or any policy of the Board of Education. The opinion and award shall be final and binding. Only the Board, the aggrieved and appropriate officials of the Association shall be given copies of the arbitrator's opinion and award. This shall be given within [thirty (30)] calendar days of the completion of the arbitrator's hearings.

NOTE: The number of levels will depend on the administrative structure of each district.

C.5. References to the grievant's dissatisfaction with decisions previously rendered should be omitted.

C.6. This language is fairly typical and should present no problems. The third sentence provides the board with the necessary flexibility to call a hearing if it so decides.

C.7. Should a board agree to binding arbitration of grievances in an administrators' contract? Ultimately, that's a decision only the local board can make. However, boards should assess such factors as whether it's necessary given the present number of grievances and its possible effect on your "management team."

An arbitrator's area of expertise is contract interpretation and thus his/her authority should be limited only to matters arising under the express written terms of the agreement. Grievances involving board policy and administrative decisions should conclude at the board level. In fact, a district may want to negotiate a provision excluding certain clauses from arbitration. If a contract contains maintenance of benefits/past practice and statutory savings clauses, it is essential that these clauses be excluded from arbitration because they serve to expand the arbitrator's authority beyond the written terms of the agreement to considering district practices or even the interpretation of statutes.

While the language on the left does limit the arbitrator to issues "within the scope of the contract," a more specific restriction of the arbitrator's authority is advisable:

> *The arbitrator shall consider grievances involving an alleged violation of the express written terms of this agreement and nothing else. The arbitrator can add nothing to nor*

8. Right to representation

Rights of employees to representation shall be as follows:

Any grievant may be represented at all stages of the grievance procedure by himself, or, at his option, by (a) representative(s) and/or an attorney selected and approved by the Association.

When a grievant is not represented by the Association in the processing of a grievance, the Association shall be notified, at the time of submission of the grievance to the Superintendent, or at any later level, that the grievance is in process. The Association shall have the right to be present and present its position in writing at all hearing sessions held concerning the grievance, and shall receive a copy of all decisions rendered.

The Board and the Association shall assure the individual freedom from restraint, interference, coercion, discrimination, or reprisal in presenting his appeal with respect to his personal grievances.

9. Separate grievance file

All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file and shall not be kept in the personnel file of any of the participants.

10. Meetings and hearings

No meeting or hearing conducted under this procedure shall be public. The only parties in attendance shall be the parties in interest and the designated or selected representatives contemplated in this article.

D. Costs

The fees and expenses of the arbitrator are the only costs which will be shared by the two parties, and such costs will be shared equally. Any other costs shall be borne by the party incurring them.

Where, however, the grievant elects to proceed without the Association's concurrence, the costs shall not be borne or shared by the Association.

Time lost by any grievant and/or his representative(s) due to arbitration proceedings shall not be charged to personal time nor shall there be any loss in pay.

subtract anything from the Agreement between the parties. Alleged statutory violations may be appealed before the appropriate legal forum but shall not be arbitrable under this Agreement.

The limitation on who shall receive the arbitrator's award should be deleted. A board should have the right to make the award available to other school boards in the state who may be facing a similar issue or choosing an arbitrator.

C.8. The law guarantees the grievant freedom from restraint, etc. and, therefore, this language should not be included.

C.10. This language cannot be used to deny the grievant any "Sunshine Law" right to compel a public discussion of the grievance. See **New Milford Board of Education**, PERC No. 81-36.

D. This is standard contract language. The second sentence may discourage individuals from pursuing frivolous grievances.

©1983 NJSBA

Article IV, *Supervisory Employee Rights*

A. Rights and Protection in Representation

Pursuant to Chapter 123, Public Laws of 1974, the Board hereby agrees that every employee of the Board shall have the right freely to organize, join and support the Association for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a duly elected body exercising governmental power under color of law of the State of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any employee in the enjoyment of any rights conferred by Chapter 123, Public Laws of 1974, or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any supervisory employee with respect to hours, wages or any terms or conditions of employment by reason of his membership in the Association; his participation in any activites of the Association; collective negotiation with the Board; or his institution of any grievance, complaint or proceeding under this Agreement, or otherwise with respect to any terms or conditions of employment.

B. Statutory Savings Clause

Nothing contained herein shall be construed to deny or restrict to any employee such rights as he may have under New Jersey School Laws or other applicable laws and regulations. The rights granted to employees hereunder shall be deemed to be in addition to those provided elsewhere.

C. Just Cause Provision

No employee shall be disciplined, reduced in rank or compensation or deprived of any professional advantage without just cause, as defined in 18A:28-5. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure and the limitation as set forth in Article III.

A. This entire section should be deleted as an unnecessary and dangerous paraphrase of the law. As the language is taken verbatim from the NJEA Sample Agreement, refer to p. 60 for additional comments.

B. The effect of a statutory savings clause is to incorporate virtually every state and Federal law and regulation into the contract and, possibly, into the purview of an arbitrator. In order to avoid that possibility, a board should strenuously resist the inclusion of this language.

C. For years, public sector unions regarded just cause provisions as a necessary part of any labor agreement. This belief was largely due to the fact that the imprecise language always afforded the union a clause to cite when filing a grievance. However, over the years the law has changed to the extent that virtually any management action that would fall under the definition of C. is non-negotiable. (For a listing see p. 61 of the analysis of the teachers' agreement.) Certainly, despite recent confusion concerning which, if any, public employees could grieve disciplinary determinations, supervisory employees clearly could not. Unfortunately, aside from the reference to discipline, just cause language is not illegal, per se, so boards must negotiate the removal of this language if it already exists in their contract. As a minimum, seek to exempt the just cause provision from arbitration, perhaps by adding a statement on the supervisor's right to pursue such a grievance to the Commissioner or other legal forum.

D. Required Meetings or Hearings

Whenever any employee is required to appear before the Superintendent, Board or any committee or member thereof concerning any matter that could affect the status of his employment, he shall be given prior notice (which will be in written form) of the reasons for such meeting or interview and shall have (a) representative(s) of the Association and/or attorney present to advise him and represent him during such meeting or interview. Any suspension shall be in accordance with provisions of 18A:25-6 and shall be with pay in compliance with 18A:6-8.3 until formal determination by the appropriate authority.

The Association shall have the right to be present to protect the interests, not only of the individual involved, but also of the organization as the bargaining representatives exclusively recognized.

E. Criticism of Supervisory Employees

Any criticism by a superior or Board member of an employee shall be made in confidence and not in the presence of teachers, parents, students or at a public gathering.

Any complaints regarding an employee made to a superior or Board member must be made in writing. The employee shall be given an opportunity to respond to and/or rebut such complaint and shall have the right to be represented by the Association or legal counsel at any meetings or conferences regarding such complaint.

Article V, *Association Rights and Privileges*

A. Information

The Board agrees to furnish to the Association in response to requests from time to time all available information concerning the financial resources of the district, including but not limited to: annual financial reports and audits, register of certified personnel, tentative budgetary requirements, all allocations, agendas and minutes of all Board meetings, census data, names and addresses of all employees and such other information that shall assist the Association in developing intelligent, accurate, informed and constructive programs on behalf of the employees, together with information which may be necessary for the Association to process any grievance or complaint.

D. The right to representation that is being sought by this language already exists in statute. Title 18A provides employees with a right to representation when called before a board or a board committee. In addition, an employee has a statutory right to representation in an investigatory meeting which he/she reasonably believes could result in discipline. **North Warren Regional,** PERC No. 79-9. Could this non-specific language also be interpreted to confer a right to representation during an evaluation conference? It's equally unnecessary to repeat the statutory procedures involving suspensions.

E. The wisdom of agreeing to this proposal must be questioned on several grounds. First, it seeks to bind third parties to this agreement (students and parents would have to file written complaints) which is of questionable legality. **North Plainfield,** PERC No. 83-120. Second, this language conflicts with the Sunshine Law where an employee requests a public hearing of a personnel matter. Finally, if an employee is to be insulated from criticism in public, the employee's superiors should enjoy the same protection. Right?

A. Similar to the NJEA Sample Agreement, this language far exceeds the union's right to information reasonably required to effectively represent their membership in bargaining or to fairly process grievances on their behalf. PERC, in a recent decision involving the **City of Union City,** PERC No. 83-162, noted the limits to a union's informational needs in denying access to the City's budget "work sheets." (For a further analysis, see p. 63 of the teachers' sample agreement.)

B. Released Time for Meetings Whenever any member of the Association is mutually scheduled by the parties to participate during working hours in negotiation, grievance proceedings, conferences or meetings, he shall suffer no loss in pay and/or benefits.	**B.** As long as the members are to be **mutually** scheduled, this language is acceptable.
C. Use of School Buildings Representatives of the Association shall be permitted to transact official Association business on school property at all reasonable times, provided that this shall not interfere with or interrupt normal school operations.	**C.** It would be prudent for the superintendent and/or the board to retain prior approval.
D. Use of School Equipment The Association shall have the right to use school facilities and equipment, including typewriters, mimeographing machines, other duplicating equipment, calculating machines and all types of audiovisual equipment at reasonable times, when such equipment is not otherwise in use. The Association shall pay for the reasonable cost of all materials, supplies and equipment incident to such use.	**D.** Again, prior approval should be retained.
E. Release Time for the President The President of the Association shall be assigned [a half-time Administrative Assistant/Assistant Principal] during the tenure of his office.	**E.** This requirement is 1) almost certainly unnecessary and 2) a questionable use of district funds to subsidize the union. If the intent of the clause is to have the Administrative Assistant/Assistant Principal do some of the normal work of the President, so that the President is free to do his union work, the clause is an illegal interference in the Board's right to assign staff.
F. Exclusive Rights The rights and privileges of the Association and its members as set forth in this Agreement shall be granted only to the Association as the exclusive representative of the supervisory employees, as defined in the unit, and to no other organization.	**F.** This is standard language, although the right of the majority representative to exclusivity is established by the law.
G. Agency Shop **1. Information is available upon request.**	**G.1.** As is the case with your teachers' agreement, a board must decide if it could philosophically accept the concept of agency shop. If the board could agree to this provision, it is strongly suggested that you read the articles on agency shop in **Negotiations '82** and **'83.** A board agreeing to agency shop should insist on iron-clad indemnification language, and get something of equal value from the union in return.

22

2. Conflict with other units with agency shop

In negotiating with other bargaining units in the district related to agency shop provision, the Board of Education shall exempt all supervisory employees from any agency shop claims from any unit other than the one in which the supervisory employee is eligible for membership.

G.2. The language in G.2. should be omitted. An arbitrator has ruled, correctly or incorrectly, that supervisory employees who are not teacher unit members but are engaged in teacher unit work (in this case, extracurricular activities), may have agency shop fees deducted under the teachers' agreement. Therefore, it is possible that this language could hold the board liable if the teachers' union failed to agree to waive agency shop fees for supervisory personnel.

Article VI, *Association-Administration Liaison*

A. Organization

Recognizing that any agreement entered into by the professional staff, the Board of Education and the supervisory personnel of schools will be effective in providing for better educational opportunities for children only if properly implemented by way of effective and continuing communication on subjects related to current school practices and problems; therefore, the Liaison Committee shall be determined by the Association.

A. The board should actively seek the input of their supervisory personnel on a wide variety of educational issues important to the district. This can be achieved informally through the superintendent, committees established through policy or other forums **outside** the labor agreement. The union need not and should not be brought into this process.

B. Meetings with the Superintendent

Meetings shall be held at the request of either party within [seven (7)] calendar days after request, but not more than [once a month,] unless by mutual consent of both parties. Meetings shall be scheduled during the school day, unless otherwise mutually agreed, and shall be of a reasonable length to discuss areas of concern.

The President of the Association and/or his representative(s) shall meet with the Superintendent and/or his designated representative(s) at the request of either party within [seven (7)] calendar days of said request, but these meetings shall not exceed [one (1) per month] unless by mutual consent. These meetings shall be of a reasonable length to discuss the areas of concern.

B. In this two-tier procedure, how do the meetings in the first paragraph differ from those in the second paragraph? If language must appear in the agreement, the second paragraph would be sufficient.

Article VII, *Administrative Staffing*

Each elementary, middle, junior high and high school shall have a principal and an assistant principal. When the school enrollment reaches [five hundred (500)] pupils, a second assistant shall be added. For each additional [five hundred (500)] students, an additional assistant shall be employed.

This entire clause is illegal. The first sentence involves assignment which is a non-negotiable management prerogative. The second and third sentences would force the board to hire additional staff based on student enrollment and thus is tantamount to an illegal class size provision.

Article VIII, *Evaluation*

A. Right to Full Knowledge

The Board of Education and the Superintendent subscribe to the principle that an employee has the right to full knowledge regarding the judgment of his superiors respecting the effectiveness of his performance and that, further, he is entitled to receive such recommendations that will assist him in increasing the effectiveness of his performance.

A. While the sentiment is nice, this clause says nothing specific about the employees' terms and conditions of employment. Vague goal statements that seemed harmless have come back to haunt a board in arbitration.

©1983 NJSBA

B. Frequency of Review

Therefore, the Superintendent shall establish supervisory procedures that will guarantee a minimum of [three (3)] written evaluations per year for each nontenured employee. The first written evaluation shall be no later than [December 1st.] The second written evaluation shall be no later than [February 1st,] and the third no later than [March 1st.] The process shall be in accordance with provisions of NJAC 6:3-1.19.

C. Evaluation Procedures

1. Copies of reports

Each employee shall sign all copies of each written evaluation, attesting to the fact that the contents of the evaluation are known to him. No written evaluation may become part of an employee's personnel file without the employee's signature. Further, each employee shall receive a copy of each written evaluation.

2. Right of employee to respond

A conference shall be arranged between the evaluator and the employee as soon as possible after receipt of the written evaluation by the employee, in compliance with NJAC 6:3-1.21. At such time, the employee is entitled to have his response to the evaluation heard and appended to the evaluation report.

3. Notice of contract renewal

Each nontenured supervisory employee shall receive written notice, prior to [April 30] of each year, whether or not the Superintendent intends to recommend a renewal of contract for the ensuing year.

Article IX, *Leaves of Absence*

A. Sick Leave

1. Accumulative

All full-time employees shall be entitled to [ten (10) for ten-month employees/twelve (12) for twelve-month employees] days sick leave per year. Unused days of sick leave shall be accumulated from year to year.

2. Retirement or termination of employment

Any employee retiring or leaving the school district after [15 years] of service shall receive [three-fourths] of his [per diem] rate of salary of his last year of employment for each day of accumulated unused sick leave.

Notifications of intent to retire/leave the district shall be required prior to final certification of the school budget for the year in which the separation shall occur.

B. N.J.S.A. 18A:27-3.1 provides that non-tenured staff members shall be evaluated at least three times per year. In order to retain flexibility, a board may be reluctant to agree to such a rigid timetable for accomplishing each evaluation (statute only specifies that they be completed by April 30). Inexplicably, there is no reference in this sample language to evaluations for tenured staff.

C.1. and 2. This is standard language consistent with the administrative regulations governing the evaluation of non-tenured staff.

C.3. N.J.S.A. 18A:27-10 **requires** a board, by April 30, to notify each non-tenured staff member as to whether or not they will be renewed. In order to retain maximum flexibility, a board should **not** agree to an earlier date.

A.1. The law requires that 10-month employees receive a minimum of 10 sick days. Any amount beyond ten days is negotiable for both 10- and 12-month employees.

A.2. Payment for unused sick leave is a negotiable topic. Most districts that provide this benefit specify that payment is at retirement and not merely upon leaving. For an analysis of this benefit and sample language, refer to the article entitled "Payment for Unused Sick Leave" in **Negotiations '83.**

©1983 NJSBA

3. Extended illness

Where, in a protracted illness, an employee shall have exhausted his accumulated days of sick leave, he shall continue to receive for an additional period equal to the total days exhausted, the per diem difference between his salary and the rate paid to his substitute.

A.3. N.J.S.A. 18A:30-6 prohibits automatic grants of sick leave beyond accumulated days. The law specifies that a board must retain case-by-case discretion.

B. Temporary Leaves of Absence

All full-time supervisory employees shall be entitled to the following leaves of absence with pay during the school year:

1. Death in family

In the event of a death in the immediate family, an allowance of up to [five (5)] days leave shall be granted. "Immediate family" shall be husband, wife, child, stepchild, father, mother, brother, sister, father-in-law, mother-in-law, brother-in-law, sister-in-law or any member of the employee's immediate household. This leave may be extended by use of personal leave provided for in Section B.3. of this Article.

2. Funerals

An allowance of [one (1)] day shall be granted to attend the funeral of other relatives of the employee. This leave may be extended by the use of personal leave provided for in Section B.3. of this Article.

B.1. and 2. This is standard language when providing specified personal leave for a death in the immediate family. Most importantly, the "immediate family" is clearly defined. Specified personal leave for funerals is somewhat less common. In either or both types of leave, the superintendent should retain discretion over the use of unspecified personal leave in extending these leaves.

3. Personal

Absence of [four (4)] days per year may be granted to an employee without reduction in pay for personal business which cannot be performed other than during employment hours. The number of unused days in any year shall accumulate for the purpose of sick leave from year to year.

B.3. Constructing an effective personal leave clause involves the careful wording of a number of components. For an in-depth discussion of these components and sample language, see the article entitled "Personal Leave" in **Negotiations '83.**

4. Jury duty

In case of required jury duty an employee shall be allowed time off for jury service. He shall be paid the difference between his regular pay and jury pay.

B.4. This is standard language.

5. Legal

In case of required appearance in a court of law involving the employee, he shall be granted time off without reduction in pay for such appearance.

B.5. This language is far too general. For instance, should an employee be paid for time spent in a legal proceeding such as a tenure or PERC hearing where the board and employee are adversaries?

6. Professional conferences

Each employee shall be entitled to attend [one (1)] national and [four (4)] state professional conferences or meetings per year without a reduction in pay. Expenses incurred by members as a result of their attendance and participation in these meetings shall be paid by the school district.

B.6. Most boards would find five paid leaves for professional conferences and meetings to be excessive and prohibitively expensive. If paid leaves are to be granted for this purpose, it would seem unwise to agree to blanket reimbursement for expenses. Application to the Superintendent and reimbursement at his discretion seems more appropriate.

©1983 NJSBA

C. Extended Leaves of Absence

1. Maternity

a. Natural birth

The Board shall grant maternity leave without pay to any employee upon request subject to the following stipulations and limitations:

(1) Maternity leave shall commence on the date requested by the employee.

(2) Any employee granted maternity leave without pay according to the provisions of this section may at her discretion elect to substitute all or any part of her accumulated sick leave in lieu thereof and receive full pay and benefits for the same.

(3) Any employee granted maternity leave shall at her request be restored to the exact same position vacated at the commencement of said leave.

(4) No employee shall be prevented from returning to work after childbirth solely on the ground that there has not been a time lapse between childbirth and the desired date of return.

(5) The Board shall not remove any employee from her duties during pregnancy unless the employee cannot produce a certificate from her physician that she is medically able to continue to perform her duties.

(6) The Board shall not discriminate against any person in violation of N.J.S.A. 10:5-1 et seq., The Law Against Discrimination, nor in violation of the Constitutions of the State of New Jersey and of the United States.

C.1.a. Unfortunately, this language is nearly identical to the NJEA Sample Agreement Clause and thus suffers from the same maladies. For a detailed analysis of each subsection, see p. 91 of this publication.

b. Adoption

Any employee adopting a child shall receive leave in accordance with Item I.a. of this Article, which shall commence upon receiving *de facto* custody of said child, or earlier if necessary to fulfill the requirements for the adoption.

C.1.b. Whether or not a district provides adoption leave is strictly a matter for negotiations. If a board does decide to grant such leaves, it should insist on retaining discretion, adequate notice, a specified length, and commencement and return dates that preserve educational continuity. By law, such leaves must be available to both females and males.

c. Paternal leave

A male employee shall be granted [five (5)] days with pay during the period in which his child is born.

C.1.c. Paternal leave is not commonly provided.

2. Illness in family

A leave of absence with or without pay up to [ ] shall be granted for the purpose of caring for a sick member of the employee's immediate family. Additional leave may be granted at the discretion of the Board.

C.2. "Immediate family" should be defined.

3. Political

The Board shall grant a leave of absence without pay to any employee to campaign for or serve in a public office or to campaign for a candidate for a public office other than himself.

C.3. Another type of leave that is not commonly provided. If a board agrees to leaves for political purposes, it should insist on commencement and termination dates that preserve educational continuity.

©1983 NJSBA

4. Good cause
Other leaves of absence with or without pay may be granted by the Board for good reason.

C.4. The granting of additional leaves under this section could result in a practice being established and the board losing the discretion to ever deny leaves for certain purposes. The presence of a "past practice" or "savings" clause increases this danger.

5. Continuation of benefits while on leave
Employees while on leave without pay shall have the option to continue paying premiums for health/insurance benefits regularly provided by the Board.

C.5. This is standard language.

6. Return from leave
a. Salary
Upon return from leave granted by the Board, an employee shall be considered as if he were actively employed by the Board during the leave and shall be placed on the salary schedule at the level he would have achieved if he had not been absent.

C.6.a. It is unusual that a board would grant credit on the salary schedule to an employee returning from an unpaid leave unless that employee worked more than 90 days during that year. Twelve month employees might be required to work 120 days for salary guide credit.

b. Benefits
All benefits to which an employee was entitled at the time his leave of absence commenced, including unused accumulated sick leave and credits toward sabbatical eligibility, shall be restored to him upon his return, and the time said leave commenced, if available, or, if not to a substantially equivalent position.

C.6.b. The reference to restoration of benefits is standard language. Apparently, there is a typo in the third line and, we believe, the remainder of the clause should read ". . . and he shall be assigned to the same position which he held at the time said leave commenced, if available, or, if not, to a substantially equivalent position." If our reading is correct, such language has been held to be illegal as it concerns assignment and reassignment. **New Milford Board of Education,** PERC No. 81-36.

7. Extensions and renewals
All extensions or renewals of leaves shall be applied for and granted in writing.

C.7. This language would eliminate board discretion to ever deny extensions or renewals.

Article X, *Sabbatical Leave*

A. Number
[( )] employees per year will be granted sabbatical leave, under the following conditions:

If sabbatical leave is to be provided, express purposes for the leave should be stated—e.g., for graduate study in the field of administration. In A, the discretionary "may" should replace the mandatory "will." In addition to the procedural requirements listed in B, the board should also insist on some form of verification of purpose

©1983 NJSBA

B. Procedure

1. Applicants must have held a supervisory position for [three(3)] continuous years.
2. The leave will encompass [ ] year, at the following rate [ ].
3. Salary after returning will be equal to the level the employee would have received had he continued in his position.
4. Application must be made on or before [ ] of the year being requested, and applicants must be notified by [ ].

Article XI, *Vacation*

A. Time Allotted

Annual vacations for association members shall be taken within the contract year at the discretion of the individual member.

The vacation schedule is as follows:

Less than 6 months' service	___ Days per month
From 6 months to ______ years	___ Days per month
From ______ years to ______ years	___ Days per month
From ______ years to ______ years	___ Days per month
Over ______ years	___ Days per month

B. Banking Time

A member may bank a maximum of [ ] days of accrued vacation time and may use it at his discretion.

C. Legal Holidays

All legal holidays (national and state) shall be considered vacation days in addition to the above vacation schedule.

D. Separation from Service

1. A member who dies before his contract period is completed shall have payment for his vacation days given to his estate.
2. A member who resigns or retires during the contract year shall receive cash payment for his vacation days.

Article XII, *Administrative Vacancies*

A. Notice

A notice of vacancy in an administrative position shall be sent to each employee and a copy shall be sent to the Association [twenty (20)] calendar days before the final date when applications must be submitted. The notice of vacancy shall set forth the position, its qualifications, its duties, and the rate of compensation. It is understood that the qualifications for any such position shall not be changed while applications are pending.

B. Implementation

To implement the foregoing, known vacancies will be advertised within [five (5)] calendar days from the date they become official.

1. When two or more unit members from within the district apply for

(transcripts, progress reports, etc.) and a return service obligation. For sample language, see the article entitled "An Analysis of Selected Contract Clauses" in **Negotiations '80.**

A. The superintendent should retain approval rights over vacation scheduling. Some boards require or, at least, encourage the taking of vacation days during the summer or over Christmas recess.

B. The superintendent should also have approval rights over the scheduling of accrued days. A limit on the number of these days should be retained.

C. If supervisory personnel are provided holidays, these days should be granted only when school is in recess and should not be considered as vacation days.

D. Payment for unused vacation days is a negotiable topic.

Consult with your superintendent to ensure that the procedures and dates agreed to are administratively feasible. B.1. and 2. are illegal because they involve criteria for selection.

the same vacancy, and the qualifications are equal, seniority in a supervisory position in the ______________________ District will be honored.

2. Those members currently employed will be given preference over candidates from outside the district.

C. Timing for Decision

The Association will be notified of the identity of the person selected for the position within [sixty (60)] calendar days of the last day for the filing of applications, or if the position has not been filled within that period, of the reason for the delay.

Article XIII, *School Calendar*

Input to the school calendar shall be solicited from representatives of this Association prior to its being adopted by the Board of Education.

A board should actively solicit the input of its supervisory personnel but **not** through the union and the labor agreement.

Article XIV, *Transfer of Personnel*

A. Involuntary Transfers

When transfer of employees is being considered by the Board, every effort shall be made to provide for a smooth transition and to guarantee that all aspects of a thorough and efficient management procedure shall be safeguarded. Transfers shall therefore follow these procedures:

A. The first sentence is a vague goal statement which says nothing specific concerning the involuntary transfer of personnel.

1. Any employee who is to be transferred to a principalship in a category in which he has not served previously, e.g., high school principal to elementary school principal, shall be given a minimum of six months' notice. Any employee who might be transferred within his designated category shall be given 60 calendar days' notice.

2. He shall be given financial support to take any necessary courses to strengthen or improve his background in the area of new assignment.

A.1. While notice provisions are negotiable, the time allotments provided seem prohibitively long.

3. He shall be given the opportunity to become oriented to parents, staff and the school plant.

4. He shall be provided with all information available in order to acquaint himself with school curriculum.

A.3. How will the transferee be given this opportunity? These sweeping, non-specific requirements should be avoided.

5. He shall be authorized to select the secretarial personnel who will serve him in the new assignment.

A.5. This is illegal because it involves the selection and assignment of personnel.

B. Voluntary Transfers

A request will be granted if:

1. A vacancy exists.

2. The qualifications of the employee involved meet the requirements of the available position in terms of professional preparation, experience and certification.

B. This is also illegal because it concerns criteria for selection and assignment of personnel.

C. Procedure for Processing Transfer Requests

1. The request for transfer shall be submitted to the [Superintendent] for endorsement.
2. The [Superintendent] shall acknowledge receipt of the request and schedule an interview with the transfer candidate as soon as possible.
3. The [Superintendent] shall inform the transfer candidate of the final decision in writing within [sixty (60)] calendar days.

C. Again, consult with your superintendent to ensure that the agreed upon procedures are administratively feasible.

Article XV, *Curriculum Determination*

A. Initiating Proposals

Proposals for curriculum change can be initiated by professionals of any level of responsibility.

B. Approving Proposals

Before a proposal involving curriculum change is sent to the Board of Education, employees affected by the change may review and make recommendations reference the proposal.

Curriculum is another area where the board should seek the input of its supervisory personnel. However, good school management dictates that this be done as a matter of course rather than as a result of contract language. Union attempts to introduce itself into this process should be rejected. There is an apparent typo in B where "reference" should read "concerning."

Article XVI, *Professional Development*

A. Professional Dues

The Board of Education recognizes the value of professional organizations and agrees to pay the dues for employees who join professional organizations at the state and national levels. The approval of the Superintendent shall be secured in advance.

A. The reference to recognizing the value of professional organizations is a goal statement which should be eliminated. If a board decides to assume the cost of dues, it should do so only for organizations specifically agreed upon and named in the contract. Many boards will feel that it is inappropriate to pay the dues for membership in an organization that provides the administrators with a professional negotiator to negotiate against the Board.

B. Reimbursement of Tuition, Fees and Books

1. Reimbursement

The Board of Education shall reimburse members of the Association for all tuition, fees, and book costs for approved college and university courses.

2. Approval for courses

Courses must be approved by the Superintendent prior to registration.

3. Time limit for reimbursement

Reimbursement shall follow within [   ] days of submission of an itemized voucher.

B. While the superintendent does retain approval rights over courses, an effective clause should, as a minimum, also include: 1) a maximum annual number of credits per employee, 2) a maximum annual dollar amount per employee, 3) a standard for successful completion—e.g., a grade of "B" or better, 4) course transcripts or other form of verification.

Article XVII, *Insurance Protection*

A. Full Health Care Coverage

As of the beginning of the 19   school year, the Board shall provide the health-care insurance protection designated below. The Board shall pay the full premium for each employee and in cases where appropriate, for family-plan insurance coverage.

1. Provision of coverage

Provisions of the health-care program shall be detailed in master policies and

This language is identical to Article XXIX of the NJEA Sample Agreement. For further comment refer to p. 99 of this book.

contracts agreed upon by the Board and the Association and shall include:

a. Hospital room and board and miscellaneous costs
b. Out-patient benefits
c. Laboratory fees, diagnostic expenses, and therapy treatments
d. Maternity costs
e. Surgical costs
f. Major-medical coverage

2. Carrier(s)

The health insurance carrier(s) shall be ____________________ for the basic hospitalization and medical-surgical coverage and ____________ for the major-medical coverage.

3. Special program(s) and carrier(s)

In addition to the above-stated program, provision shall be made to provide the following health programs:

a. Prescription drug costs
b. Dental care
c. Optical care

The Board shall make full payment for the services listed above in this paragraph with a carrier(s) approved by the Association.

4. Complete annual coverage

For each employee who remains in the employ of the Board for the full school year, the Board shall make payment of insurance premiums to provide insurance coverage for the full [twelve (12)] month period commencing [September 1] and ending [August 31]. When necessary, payment of premiums on behalf of the employee shall be made retroactively or prospectively to assure uninterrupted participation and coverage.

B. Retirement Coverage

The Board shall provide for continuance of health-care insurance after retirement on the terms detailed in the master policies and contracts agreed upon by the Board and the Association.

C. Description to Employee

The Board shall provide to each employee a description of the health-care insurance coverage provided under this Article, no later than the beginning of the 19 - school year, which shall include a clear description of conditions and limits of coverage as listed above.

D. Washington National

The Board of Education shall provide for each member of the bargaining unit who has achieved tenure in the position the NJCSA Washington National income protection plan (see booklet for plan designation).

E. Life Insurance

The Board of Education shall provide a term life insurance policy for each member of the supervisory employees bargaining unit, not to exceed the maximum prescribed by law.

F. Annual Examination

The Board of Education shall provide an annual examination at no cost to the member.

A.2. The identity of the insurance carrier is **not** a negotiable topic. However, the board cannot unilaterally change carriers if it would affect the level of benefits or the administration of the plan. **City of Newark,** PERC No. 82-5.

A.3. In an era when health insurance costs are increasing 20 to 40 percent each year, a board should **never** agree to any of these plans without some form of a dollar cap.

B. Health insurance benefits for future retirees is negotiable. **Borough of Bradley Beach,** PERC No. 81-21.

D., E., F. D., E. and F. represent the latest in the endless search for new non-taxable benefits. While an annual physical may be provided at a relatively modest cost, a board should be cautious about agreeing to something as exotic as an income protection plan, particularly in the absence of some form of dollar cap.

©1983 NJSBA

Article XVIII, *Protection of Employees and Property*

A. Unsafe and Hazardous Conditions

Employees shall not be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety or well-being.

A. While employee safety is of prime concern, vague references to employees' "well-being" should be avoided. If the union can provide specific examples of conditions or tasks which constitute safety risks, and these problems can be addressed through precise contract language, the parties may agree to do so.

B. Procedures for Emergency Conditions

The Board of Education, in conjunction with the Association, shall establish written policies and procedures for handling emergency situations.

In the event an emergency situation arises that is not covered by the written policy, the building principal shall have the authority to make whatever decision he deems necessary for the safety and welfare of the students.

Any long-term disorder or disruption will require a meeting of the Superintendent, administrative staff and Board of Education to develop a mutually acceptable program to cover the situation.

The Board of Education shall take the following steps to deal with employee strikes:

1. Develop a district-wide plan in conjunction with members of the supervisory bargaining unit.
2. The Board of Education shall authorize the principal of each school to make a determination on opening and/or closing said school in the event that the safety of students or other personnel cannot be guaranteed because of the strike.
3. In no instance shall members of the supervisory unit be requested to serve summonses to striking employees or to take other action which would have a serious effect on the ability of the supervisor to work cooperatively with staff members to restore the school to a normal operating basis after the strike has been concluded.
4. The Board of Education shall assure that all necessary protection is provided to employees who are required to cross the picket lines. If the Board is unable to guarantee their safety, the school shall be closed.

B. The input of supervisory personnel (not the union) should be sought when establishing such policies. That policy should be sufficiently broad as to define the decision-making responsibilities of the board, superintendent and building principals in all emergency situations. Few boards would want to contractually agree to grant the building principal complete decision-making authority in the absence of policy.

The references to employee strikes in 1, 2, 3 and 4 should also be omitted. Indeed, a district may draft a detailed plan to deal with a strike and supervisory personnel should be consulted. However, that strike plan should not be the subject of negotiations with the supervisors' union.

C. Assault

1. Legal assistance

The Board shall give full support, including legal and other assistance, for any assault upon the employee while acting in the discharge of his duties.

2. Leave

When absence arises from such assault or injury, the administrator shall be entitled to full salary and to other benefits for the period of such absence but shall not forfeit any sick leave or personal leave.

3. Reimbursement for personal property damage

The Board shall reimburse employees for the reasonable cost of any clothing or other personal property damaged or destroyed as a result of an assault suffered by an employee while the employee was acting in the discharge of his duties within the scope of his employment.

4. Medical

The Board shall reimburse an employee for the cost of medical, surgical, or hospital services incurred as the result of any injury sustained in the course of his employment.

5. Workmen's Compensation

Benefits derived under this or subsequent Agreements shall continue beyond the period of any Workmen's Compensation until the complete recovery of any employee when absence arises out of or from assault or injury.

C. This is another clause lifted verbatim from the NJEA Sample Agreement. If a board is considering such a proposal, insert language to the effect that this provision will only apply where it has been determined that the employee is not responsible for the resultant injury or legal proceeding. In subsection 2, disability benefits and leaves of absence covering the first year of an employee's work-related injury are mandated in **N.J.S.A.** 18A:30-2.1.

Article XIX, *Deductions from Salary*

A. Association Payroll Dues Deduction

1. The Board agrees to deduct from the salaries of its employees dues for any

A. A. is basically a restatement of the law.

one or combination of associations as said employees individually and voluntarily authorize the Board to deduct. Such deductions shall be made in compliance with Chapter 233, N.J. Public Laws of 1969 (NJSA 52:14-15.9e) and under rules established by the State Department of Education. The person designated shall distribute such monies to the appropriate association or associations.

2. Each of the associations shall certify to the Board, in writing, the current rate of its membership dues. Any association which shall change the rate of its membership dues shall give the Board written notice prior to the effective date of such change.

B. Local, State, and National Services

The Board agrees to deduct from employees' salaries money for local, state and/or national association services and programs as said employees individually and voluntarily authorize the Board to deduct and to transmit monies promptly to such association or associations.

C. Tax Sheltered Annuity

An employee may authorize the Board to make deductions for the purpose of tax-sheltered annuities pursuant to the provisions of R.S. 18A:66-127, et seq., and the terms of a group contract approved by the Board.

C. 18A:66-127 is merely the statute enabling a board to enter into an agreement with the employee to deduct monies for this purpose.

Article XX, *Miscellaneous Provisions*

A. Selection of Personnel

1. Professional and nonprofessional

The building principal shall recommend the appointment of all professional and nonprofessional personnel to his building.

2. Administrative

The Association will participate in selecting all administrative personnel who are not assigned to a school building.

A.1 and 2. The selection of personnel is a non-negotiable managerial prerogative.

B. Selection of Superintendents

The Association will participate in selecting Assistant Superintendents and the Superintendent.

B. Need it be said that this is illegal?

C. Protection Against Infringement Upon Contract

The Board of Education shall not enter into any negotiated agreement with any other bargaining unit in the district which shall infringe upon the ability of the principal to manage his school. In order to prevent such infringement, the Board will submit all contract provisions proposed for other bargaining units to the Association for evaluation prior to finalizing such agreements. The input received from the Association shall be utilized in determining final language or negotiability of the subject.

C. Your supervisory personnel represent a valuable resource when drafting and receiving proposals in negotiations with other bargaining units. A negotiations policy should be developed which provides for their input in reviewing language which may affect the day-to-day administration of the schools. However, as previously mentioned, this process should not incorporate the supervisors' union and does not belong in their agreement.

D. Participation in Policy Making

The Association will be consulted and given an opportunity to participate in the development of all policies and procedures.

D. Delete for the aforementioned reasons.

©1983 NJSBA

E. Use of Automobile

1. All members of the Association who may be required to use their own automobiles in the performance of their duties shall be reimbursed at the rate of [   ] per mile. The Board shall cover all damages, losses, and expenses incurred by a member arising out of the authorized use of his automobile in the performance of school duties.

2. The Board of Education shall provide liability insurance coverage to the supervisory member whenever he must use his automobile in the discharge of his duties.

F. Involuntary Reduction of Personnel

There shall be no reduction in staff, except for good cause (18A:28-9). In the event of reduction in staff, every attempt will be made to place this person(s) in a professional position within the district. No person outside of the district shall be employed in a position for which an individual who is affected by a reduction in staff is certified.

G. Administrative Reorganization

The Superintendent shall request the advice of the Association before presenting a recommendation to the Board for the creation, change, or abolishment of any position covered by this Agreement.

The Superintendent shall request the advice of the Association before implementing a new administrative organization or before abolishing an existing structure at either the district or building level.

H. Printing and Distribution

The School District will, at its own expense, print sufficient copies of this Agreement for present and new employees.

I. Notice

Whenever any notice is required to be given by either of the parties to this Agreement to the other, pursuant to the provision(s) of this Agreement, either party shall do so, in writing, at the following addresses:

1. If by Association, to Board at ______________________________

____
(Address)

2. If by the Board, to Association at ______________________________

____
(Address)

Article XXI, *Legality of Agreement*

In the event that any portion of this contract shall be deemed to be in violation of the law, the remainder of the contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective presidents and attested by their respective secretaries.

____________________ Association
By____________________ President
By____________________ Secretary
Date____________________

____________________ Board of Education
By____________________ President
By____________________ Secretary
Date____________________

E. While a board may agree to pay a certain mileage rate, contemplate the legal nightmares which could result from the board assuming all liability for use of the automobile. Under 2, it would be difficult, if not impossible, to provide insurance in such limited circumstances.

F. Reduction in force is governed by statute and regulation which need not be repeated in the labor agreement.

G. Again, this language attempts to introduce the union into the administration of the school district.

©1983 NJSBA

THE SIXTH TEACHING PERIOD CLAUSE

In 1984, this nation's public school system will face greater challenges than ever before. A variety of national reports suggest that the quality of public education is on the decline. Other studies decry the quality of new teachers entering the field and report on widespread shortages of qualified math and science teachers. As usual, the dollars available to address these problems are in woefully short supply.

Certainly, there is no shortage of proposed solutions: massive infusions of state and federal money, a twelve-month school year, longer school days, merit pay, differential pay, subject area bonuses, cooperative ventures with private industry. Dismissing the prospects of a state and federal Marshall Plan for our schools as highly remote, most of the other proposed solutions 1) may be prohibitively expensive for a school board in these fiscally austere times, and 2) will face strong opposition from the teachers' unions.

While some, or maybe all, of these solutions will some day be implemented with dazzling results, the short-term message for the local school board is clear: be more productive with your existing resources. One indication that school boards have come to this realization is the interest being expressed in increasing teacher-pupil contact time.

School boards that have contract clauses specifying a certain number of teaching periods, duty periods and preparation periods have sought and won changes in negotiations permitting the assignment of an extra teaching period in lieu of a duty or preparation period. In many instances, these increases in the number of teaching periods represent a reversal in a trend of declining teacher-pupil contact time in the district.

Advantages

A school board that has the ability to assign a sixth teaching period can fully utilize its existing staff. The additional teaching period may be assigned where the need is greatest and thus minimize or eliminate teacher shortages. In addition, it provides the administration with flexibility to respond as the school's needs change. For instance, the present need may be for math teachers but in three years the shortage may shift to foreign languages. One of the criticisms leveled at subject area bonus plans is that a school board can be locked into paying a certain type of teacher more even after that shortage may lessen or disappear.

If the existing staff can be utilized in a more productive fashion, the school board need not resort to the additional trouble and expense of hiring new teachers. If a district must hire in a scarce discipline it 1) may have difficulty finding qualified personnel and 2) may have to pay in excess of the minimum salary on the guide to attract such an individual (providing the contract permits the board that luxury). It should also be noted that a district which provides the typical benefit package (full family medical, dental, etc.) must absorb these costs for each new teacher that is hired. Finally, there is the time, expense and loss of productivity inherent in training and evaluating any new teacher.

As noted above, merit pay, differential pay and subject area bonus plans are meeting fierce opposition from the teachers' union. Most unions will unanimously condemn any plan which violates the cherished "equal pay for equal work" doctrine. In contrast, a sixth teaching period that pays some teachers more money for *more work* is more philosophically acceptable to a union. And while the effect of an additional teaching period may be to pay certain types of teachers more, no one category of teachers is specifically singled out for payment (and thus the remaining teachers are not automatically excluded) therefore making the proposal more palatable.

Compensation

More correctly, it should be stated that the right to assign a sixth teaching period may be acceptable *at a price* and that price may be steep. Actually, if a teacher now has five teaching periods and is assigned a sixth for the entire school year, a commensurate increase in his or her annual salary might be 15% to 20%, if the additional teaching period results in the loss of a preparation period. If a teacher is assigned a sixth teaching period in lieu of a duty period, a commensurate increase may be 10%.

Alternatively, the additional period might carry a flat dollar stipend of $1000 to $3000, similar to an extracurricular stipend. This approach is desirable if one of your goals is to increase the total salaries of teachers who are in short supply to keep them from deserting your district for the private sector, because flat dollar stipends will provide higher percentage increases to those lower paid, less senior staff who are most susceptible to the lure of corporate salaries. Flat dollar increases also provide more actual dollars to these lower paid staff than would percentage increases.

Sample Language

"The School Board retains the right to assign any teaching staff member to a sixth teaching period as it deems necessary. Teachers assigned said period in lieu of their regular preparation period shall receive______. Teachers assigned said period in lieu of their regular duty period shall receive______."

©1983 NJSBA

A BOARD POLICY ON NEGOTIATIONS

In recent years, boards of education have become increasingly aware that solid preparation for bargaining enhances their negotiating positions and their ability to achieve board goals at the table. However, most boards plan their negotiating process primarily in terms of their relationship with the union and give little consideration to the relationship between the board and its representatives. Yet, the internal relationship which exists among all members of management involved in the board's negotiating efforts has a serious impact upon the board's bargaining position and upon the nature of the settlement.

Board members' responses to union "end run" attempts, tentative settlements which ignore board parameters, difficulties obtaining board ratification, and information "leaks" concerning board positions are problems which stem from an ill-defined internal relationship. Interestingly, these difficulties can usually be traced to the actions of well-meaning individuals who, although anxious to reach a settlement, honestly do not understand the dynamics of negotiations, the union's divide-and-conquer strategy, nor the board's need for a coordinated bargaining structure.

Boards can avoid many of these pitfalls of misunderstanding by defining and communicating, prior to the onset of negotiations, the relationship which should exist between the board and its bargaining representatives; boards can develop policies to establish their expectations for the internal conduct of their negotiations.

Although board expectations can be stated in a variety of ways, formal policy statements are particularly well-suited to express the board's goals for its internal relationship.

- The process of policy development and adoption involves the entire board and focuses the attention of all board members on the issue. Thus, the process itself can partially accomplish the goal of providing board members with an understanding of negotiations and of their individual responsibilities in that effort.
- Policies, resulting from discussion of principles and strategies, become an expression of the consensus of the board rather than the desire of a few vocal board members; thus policy statements are insulated from internal board politics.
- Policies and by-laws are governance statements, representing the rules the board has imposed upon itself to guide its actions; they have the force of law and are applicable to all involved. As such, policies are readily accepted by board members and administrators as legitimate, authoritative guidelines developed in response to issues and not to personalities.
- Policies are formal, written statements which are easily accessible, retrievable points of reference and sources of information. They provide a continuity of procedures to current and future boards; once a board has addressed its expectations for the internal conduct of negotiations, future boards will need to consider their internal bargaining relationship whenever readopting, revising, or deleting the policy.

In developing policies to govern the internal management of negotiations, boards need to address the components of the relationship between the board and its representatives.

1. The Role of the Board During Negotiations:

a. statutory obligation: The board, as a public employer, has a statutory obligation to negotiate in good faith with the majority representative of its employees.

b. delegation: The board may delegate its duty to negotiate to agents or representatives.

c. ratification: PERC has held that the board does not have the inherent right to review a tentative agreement reached by its representatives (see *Bergenfield Board of Education*, PERC No. 90, 1 *NJPER* 4). Thus a board must explicitly retain its authority to review, and to ratify or to reject, a tentative agreement. A statement of the exclusive right of the board to ratify an agreement notifies not only the community and the union but also all board representatives of the authority of the board; it also eliminates the possibility that the board will be bound by the actions of a minority of its membership.

d. establishing parameters: The board's authority to ratify is accompanied by its responsibility to set the parameters of the settlement. The process by which the board establishes negotiations guidelines can become a learning experience for all board members and can influence the outcome of negotiations; a rational process should provide the board with a realistic, achievable framework for negotiations. The process should include: consideration of the district's needs and resources; a comparative analysis of the outcome of other districts' negotiations; an assessment of union demands; and provisions to reexamine and possibly readjust initial parameters. Negotiations committees, administrators, and consultants can be invaluable resources in providing information and advice in establishing goals and priorities. In establishing its parameters, the board should also confirm its obligation to support a tentative agreement which falls within its framework for an acceptable settlement.

2. Designation of Board Representatives

a. the bargaining team: The rule of thumb that board committees should not constitute a majority of the membership is of extreme importance to the configuration of the negotiations committee. (For a complete discussion of the particular importance of maintaining minority representation at the table and of criteria for assignment to the team see *Collective Negotiations,* NJSBA, School Board Library Series, Vol. 5, 1983). The board may appoint non-board members, such as labor relations consultants, to serve on the team.

b. continuity of the team: In selecting its bargaining team, a board must recognize that negotiations are often not completed by the date of the board election. The appointment of a completely new bargaining team, at the reorganization of the board, can seriously disturb the board's on-going negotiations. The negotiating team should therefore be initially selected to ensure stability of representation during the continuing negotiations. Appointments of board members who are in their first and second year of their terms can provide continuity to the team and can also provide continuity of labor relations experience on the board.

c. selection of the chief negotiator: The board may, at its discretion, appoint a board member, an administrator, or a labor relations consultant to be its chief negotiator. The board's ability to utilize a consultant, either as a negotiator or as a resource person, is usually spelled out in a board by-law on the use of consultants but it may also be included in a policy on collective negotiations.

d. selection of the district's spokesperson for negotiations releases: The authority to release information or to respond to media inquiries concerning negotiations should reside in one individual. The designation of an official spokesperson assures that the releases are consistent with the board's intent, informs board members and administrators that there is an official channel to handle releases, and allows them to refer inquiries to the proper source.

3. The Responsibilities of the Board's Designated Representatives

The explicit authority reserved to the full board implies that representatives shall have limited authority; however, to prevent misunderstanding and to reinforce the boundaries of the team's authority, the role of board representatives should be explicitly stated. It should be noted that the responsibilities of the committee are applicable to all negotiating teams regardless of the identity of the chief negotiator.

a. the authority of the team: Within the framework of the board's parameters, the negotiating team should have the authority to present board proposals, to respond to union proposals, to offer counterproposals, and to reach a tentative agreement. In order to engage in good faith bargaining, the team must be able to exercise the authority, without seeking board approval, to move within the board's guidelines. However, the team does not have the authority to negotiate outside or beyond the board's framework. A clear delineation of the limits of its authority should establish a clear understanding of the team's boundaries and should prevent tentative agreements which cannot be supported by the board.

b. the authority of individual team members: The authority to negotiate rests with the entire team. Just as an individual board member does not have legal status outside the entire board, the individual team member does not have an individual authority to negotiate with union representatives. An individual team member may only negotiate independently when there is the knowledge and consent of the entire team. Defining individual authority may prevent unauthorized negotiations which can undermine the board's position.

c. the responsibilities of the superintendent: In most districts, the superintendent serves as a resource person to the board at all stages of negotiations. During bargaining, the superintendent should be consulted to assess the impact of possible agreements on the administration of the district. The board's expectation for the superintendent's role should be established in policies on "Administrative Role in Collective Negotiations", or "Contract Administration", or in the CSA's job description.

4. Interaction Between the Board and its Representatives

a. training and inservice: A well-defined relationship, without a basic understanding of the negotiations process, will not necessarily result in successful bargaining. A board's negotiating effort, whether headed by a professional negotiator or by a board member, is enhanced by providing labor relations training to the team and to other interested board members. Those attending training programs should report to the rest of the board in executive sessions. Reports assure that all board members develop some understanding of the process and remain informed of bargaining trends, developments and new ideas.

b. communication: Regularly, in executive session, the team should discuss the progress of negotiations with the entire board. Keeping the board well-informed and up-to-date on the development of negotiations should: prepare the board for the need to compromise in certain areas and for the potential for success, or failure, in other areas; determine the need to reexamine and possibly redefine parameters; prepare the board for the nature of the possible settlement; and permit the team to assess the board's reaction and to discuss alternatives with the board. Frequent communications permits a mutual, realistic assessment of the progress of negotiations; good communication between the board and its teams should prevent surprises and rejections of tentative agreements. In addition, regular communication is particularly helpful when more than one contract is being negotiated by different board teams: the teams have an opportunity to exchange information, to assess similarities, and to coordinate responses.

c. respect for assigned roles and responsibilities: A clear designation of roles implies that delegated responsibilities will not be usurped by other board agents. However, explicit statements defining unauthorized and unacceptable behavior reaffirm the boundaries of established roles and provide board members with the ability to respond to union attempts to bypass the established procedures; the approached board member may quote the policy and say "I do not have the authority to discuss these matters." Providing board members with an easy answer to use in a difficult and uncomfortable situation is an invaluable benefit of a formal policy statement.

©1983 NJSBA

The components of the board's internal negotiations relationship can then be combined to form a policy to govern the conduct of its negotiations. The policy, addressing all major aspects of a board's internal conduct of the bargaining process,[1] establishes and communicates expectations for the relationship which should exist between the board and its bargaining representatives. The policy should result in board members' increased awareness of their responsibilities and of the board's need to maintain coordinated control of its negotiations process. The policy should therefore prevent inappropriate, unacceptable, and potentially damaging behavior during negotiations and should enhance the board's ability to meet its bargaining goals.

Collective Negotiations

1(a) The Board of Education recognizes its duty to negotiate in good faith regarding
terms and conditions of employment with the majority representatives of its unionized em-
1(b) ployees. To affectuate this responsibility, the Board shall appoint a negotiations committee or
committees to represent it in negotiations with employee organizations, but the entire Board
1(c) retains the authority to review and to accept, or to reject, any tentative agreement(s) reached
by its negotiations committee(s).

2(a) The Board's negotiating committee(s) may include board members, administrators, and such
outside negotiations experts as designated by the Board; however, the number of board members
assigned to any negotiations committee shall not constitute a majority of the Board. Whenever
2(b) possible, the negotiations committee(s) shall include board members who are in the first and
2(c) second year of their elected/appointed term. The Board, at its discretion, shall appoint one
member of the committee to serve as the Board's chief spokesperson.

1(d) The Board, in consultation with administrators and the negotiations committee(s) shall set
bargaining goals and parameters for any settlement. The committee(s) shall have the authority
3(a) to negotiate within the parameters determined by the Board; the committee(s) shall not have
the authority to make proposals, or to agree to union proposals, which are not in accord with
the Board's parameters.

3(b) Members of the committee(s), other board members and administrators shall not have the
4(c) authority to consult with or to negotiate with any employees or representatives of employees
regarding any matters currently the subject of negotiations without the express consent of the
committee.

4(b) The committee(s) shall regularly report to the Board, in executive session, the progress of negotiations and may seek additional direction or advice from the full Board, the administrative staff, or any outside negotiations expert designated by the Board.

4(a) The Board shall provide committee members and other interested board members with the opportunity to attend labor relations training programs. To keep the full Board informed of the process, members attending such programs will report to the Board at the first executive session following the program.

2(d) The Board shall designate a spokesperson for contacts with the public and the press regarding
negotiations. Board members and administrators shall refer all inquiries concerning negotiations
to this spokesperson. No board member or administrator other than the designated spokesperson
4(c) has the authority to discuss any aspect of negotiations without the express consent of the Board.

3(c) The Board shall direct the Superintendent of Schools to establish, in consultation with the Board, the administrative staff and any labor relations consultants designated by the Board, procedures for administrative involvement in the negotiations process and for the administration of the negotiated agreement(s).

---

[1] This policy, however, does not represent the board's involvement in all aspects of labor relations; for example, the board's expectations for the administration of the contract remains to be addressed in a separate policy.

©1983 NJSBA

THE MANY DIMENSIONS OF THE MERIT PAY ISSUE

Introduction

Between now and the 1984 Presidential sweepstakes, the current debate over the validity of merit pay plans for teachers will continue to rage. Opponents refer to such plans as "quick fixes" and "simplistic solutions" to complex problems in education. Supporters, however, claim that the time is now right for serious consideration and quick implementation of some type of compensation plan to improve the quality of teaching by rewarding teachers for superior performance.

Despite its new found popularity in certain political and educational circles, merit pay is not a concept new to public education. In fact, it has been around in a variety of forms for a long time. Merit pay has been tested in some districts and has shown signs of problems as well as promise. Still, New Jersey school districts have had very little experience with merit pay. Although in the past some districts had compensation plans for teachers that deviated from traditional salary guides, we know of no district that utilized such a plan during the 1982-83 school year.

The current interest in merit pay plans warrants an examination of the issue. This should not be read as either an endorsement or rejection of merit pay plans, but rather as a description of the potential assets and liabilities of such plans, as well as the practical problems associated with their implementation.

Advantages

The advantages of merit pay plans highlight their value to the education of students, to the quality of teaching, and to the morale of superior teachers.

- Nearly all professionals in the private sector earn monetary rewards on the basis of quantity and quality of their performance. Teachers are no different. The amount of money a teacher earns should be a function of how well that teacher does his/her job.
- The performance of teachers varies greatly. Treating all teachers alike, according only to years of service and academic experience, ensures continued complacency among mediocre and incompetent teachers who have a vested interest in protecting the lockstep feature of a salary guide.
- The additional compensation involved as well as the status attached to being identified as superior will serve as an incentive for all teachers to work harder, and perform at a higher level. This will improve the amount of learning in our schools.
- The public will support more money for teachers' salaries as long as these increases are linked to demonstrated high quality work by teachers.
- There is no greater inequality than the equal treatment of unequals.
- Morale will improve because teachers, under a merit pay system, will now be paid according to their worth, rather than their particular placement on a salary guide. The majority of individual teachers support merit pay for this reason.
- Merit pay will encourage and retain superior teachers in the profession, because they now have the chance to increase their level of earnings.
- Unlike negative sanctions like withholding of increments, merit pay is a positive approach that identifies and rewards the superior teacher.
- Teachers are frequently making subjective decisions about the quality of their students' work, including assigning grades that correspond to various levels of student performance. Similarly, administrators are highly trained in methods of evaluating teachers. These evaluations can and should be used to determine which teachers should receive merit pay.
- Ample good faith among school board members, administrators, and teachers can ensure the success of merit pay plans. This has occurred in several districts throughout the nation.
- Tenure laws protect mediocre and incompetent teachers. Merit pay plans acknowledge and reward superior teachers.

Disadvantages

The major disadvantages include the unscientific nature of teacher evaluation, the need for vastly improved teachers' salaries across-the-board and likely morale problems.

- The basic problem with merit pay plans is that teacher performance and competence cannot be measured accurately; therefore, it is difficult, if not impossible, to identify the superior teacher.
- Merit pay plans will foster ill-will between administrators and teachers. Negative and competitive attitudes will replace positive and cooperative ones.
- Until the overall level of teachers' salaries improves, merit pay will serve only to highlight the inadequacy of current salary levels.
- Merit pay will stifle teacher creativity. Teachers will teach to the established standards, rather than choose alternative and perhaps more creative ways of reaching their students.
- Merit pay plans are only one approach to a much more complex challenge, viz. improving the quality of teaching. There is no evidence that merit pay will inspire superior teachers to sustain or improve their performance, nor that it will transform mediocre or incompetent teachers into outstanding performers.
- Many teachers and most of their local unions have serious reservations about giving administrators

©1983 NJSBA

carte blanche to determine who gets merit pay, and expect political interference and favoritism by school boards.

- The solution is not rewarding the superior teacher, but working with the average and below average teacher. There are ways of doing that now through the current system of constructive evaluation, in-service education, financial sanctions, and removal from position.
- To work properly, merit pay plans require the commitment of enormous amounts of time to evaluate teachers, far beyond the time currently being allocated for that purpose.
- Merit pay plans will be expensive. They will require additional expenditures of monies beyond those currently being paid out. If a plan is truly going to work, there should be no limitation on the number of teachers entitled to merit pay and no limitation on the amount of merit pay granted to each teacher. An extra $500 or $1,000 dollars granted to a teacher currently earning $25,000 may have some symbolic and psychological value, but the financial incentive to perform better simply is not there.
- Public relations and morale problems ensue when certain teachers are deemed "meritorious." Parents will want these teachers to teach their children. Other very competent teachers will be viewed as "second rate."

There are probably other reasons for supporting or opposing merit pay plans. But the point is that this is a very complex issue. Supporters may tend to oversimplify the problem whereas opponents may merely reject it because it threatens the *status quo.*

Implications for Implementation

Although there has not been a case directly on point, it is fair to assume that any type of alternative pay plan will have to be negotiated with the employees' majority representative. Compensation, in the abstract, is a term and condition of employment, subject to mandatory negotiations, and, unless preempted by some legislative action or administrative rule or regulation, any form of compensation plan requires agreement between the school board and the employee organization.

The goal of every trade union has always been to standardize the employer's treatment of employees. A merit pay plan, by definition, provides discretion to an employer in determining the compensation of its employees. Consequently, any trade union will oppose merit pay as a matter of principle.

Teacher unions are no different. The NJEA has long opposed merit pay, and should be expected to continue to do so. Other unions will likely follow the same course. A union gains membership by propogating the belief among employees that only the union's presence protects employees from the arbitrary and capricious actions of the employer. To expect a union to embrace merit pay, which grants the employer the freedom to draw distinctions between employees, is to misunderstand the nature and purpose of labor unions. Most unions would reject the idea of merit pay, even if the cost of the plan was *in addition to* a normal salary settlement or even the highest settlement in the county.

Any school board contemplating a merit pay plan for its teachers should be prepared for vigorous opposition from the local union. No matter how generous your proposal, and regardless of the support such a concept may have among individual teachers, the union will be loath to agree to it. Any success in this area will occur only if the board makes it clear from the beginning of bargaining, and at every discussion of compensation that occurs thereafter, that merit pay is a necessity for the board, and that there will be no agreement without it.

Beyond the difficulty of reaching agreement on such a plan, another related and equally complex issue emerges. What standards of judgment and measurement will be used to identify the superior teacher? These two issues are integral parts of the same process, and it would appear again that the process of identifying the superior teacher for purposes of a merit raise would also be a mandatory topic of bargaining.

According to studies of merit pay, substantial staff involvement in the establishment of a merit pay plan, the choice of criteria, the implementation of the plan, and the ongoing evaluation of the plan is critical to its success. This involvement must include the teachers union at the negotiations stage, but may be broader than the union at the implementation and evaluation stage, when direct staff input and reactions might be sought.

In addition to substantial staff involvement, several other basic factors appear essential to the success of any merit pay plan.

- the parties must have confidence and trust in each other
- evaluations must be done expertly, objectively, and frequently (once per year is usually not enough)
- the board must adequately fund the plan to make the merit awards meaningful
- merit payments should be available to all deserving teachers; quota systems can be disincentives to the majority of staff
- merit should be the criteria for salary increases for all supervisory staff as well, so that the teaching staff know that their superiors are not treated by a different, less demanding criterion than they are.

Any drastic change from the *status quo,* which deals with such value-laden terms as "superior teacher" and "meritorious achievement" and is tied to increased compensation, requires much forethought and planning. If anything is certain about merit pay plans, it is that a poorly designed and administered plan can be extremely harmful to staff morale and the entire educational enterprise. That is not to suggest that creative and effective plans are not possible to design and administer, but that they do not emerge instantaneously. They require work, commitment, good faith, trust, and probably additional dollars.

Sample Merit Pay Plans

School boards interested in sample language on merit pay plans are directed to *Merit Pay for Teachers,* published by the Educational Research Service, Inc., Arlington, Va., which contains a multitude of examples of actual school district merit plans, or to the NJSBA Labor Relations Department.

Selected Bibliography

The Bureau of National Affairs, ***Performance Appraisal Programs.*** PPF Survey No. 135, Washington, D.C.: BNA, 1983. 60 pp.

BURKE, BARRY T., "Merit Pay for Teachers: Round Valley May Have the Answer"; FRASE, LARRY E., "Merit Pay: A Research-Based Alternative in Tucson"; and SAY, ELAINE and LESLIE MELER, "The Second Mile Plan: Incentive Pay for Houston Teachers"; all in ***Phi Delta Kappan*** (December 1982)

CONTE, ANTHONY E. and EUGENE R. MATSON. ***Merit Pay: Problems and Alternatives.*** Trenton, New Jersey: New Jersey Department of Education, the Division of Research, Planning and Evaluation, April 1972, 35 pp. (ED 064 791).

Evaluating Teacher Performance. 1800 North Kent Street, Arlington, Virginia: Educational Research Service Inc., 1978, 234 pp. (An extensive bibliography is included). $24.00 per copy.

Iowa State Education Association, Merit Pay Study Committee. ***Merit Pay: Report of the Merit Pay Study Committee,*** 4025 Tonawanda Drive, Des Moines, Iowa. 50312 (1970), 28 pp.

Merit Pay for Teachers. 1800 North Kent Street, Arlington, Virginia: Educational Research Service, Inc., 1979. 126 pp. (An extensive bibliography and numerous examples of merit pay plans are included). $19.00 per copy.

Merit Salary Program for Teachers. Department of Research. San Diego, California: San Diego City Schools, September 15, 1953. 33 pp.

MEYER, HERBERT H. "The Pay for Performance Dilemma" in ***Organizational Dynamics,*** (Winter 1975)

RIST, MARILEE C. "Our Nationwide Poll: Most Teachers Endorse the Merit Pay Concept," in ***The American School Board Journal*** (September 1983)

RHODES, ERIC. "Making Merit Pay Work" in ***Evaluation and Merit Pay Clinics.*** Albany, New York: New York State School Boards Association, 1973, pp. 43-46, (ED 089 419).

_________ "Merit Pay—Where We Stand" in ***Evaluation and Merit Pay Clinics,*** Albany, New York: New York State School Boards Association, 1973, pp. 1-8. (ED 089 419).

ROBINSON, GLEN E. "Paying Teachers for Performance and Productivity: Learning from Experience." Educational Research Service, Inc. (May 1983). 19 pp.

TOLL, STANLEY. "This Merit Pay Plan for Management Improves Performance and Sets an Example for Other Employees (like teachers, for instance)," ***American School Board Journal*** 197 (August 1983): 38-39.

©1983 NJSBA

NEGOTIATING SALARY GUIDES

One part of your preparation for negotiations should be an examination of your salary guide. Consider the following questions:

- Are your starting salaries too low to attract and retain excellent new teachers?
- Is the range between the minimum and maximum salary on each column too great, i.e., is it reasonable to pay some teachers $10,000 more than other teachers, for doing the same work with the same college degrees, simply because of their greater experience?
- Is your guide too long, i.e., does it take too many years of service to reach the maximum?
- Does your guide have a "balloon step"—an increment between the last step and the next to the last step which is much larger than the other increments throughout the guide, so that teachers moving to the last salary receive a huge increase?
- Are the board and administration frustrated over their inability to recognize outstanding staff through special salary consideration?

These are concerns that many New Jersey school districts have recognized in the past few years, and are addressing at the bargaining table. If your district has any or all of these problems, seek changes in your guide during your next negotiations.

Starting Salaries

There are two ways to address the problem of low starting salaries. The first is to negotiate complete discretion for the board in deciding the initial placement of new teachers on the guide. If it takes an offer of a Step 10 salary to hire the particular teacher you want, you should be able to make that offer. If your contract does not now provide you that discretion, demand the inclusion of the following in your next contract:

The initial salary of all new teachers shall be at such point as may be agreed upon by the person and the board.

Such a clause also saves you from having to grant 10 years credit on the guide to a new employee who would be perfectly willing to accept placement at the fifth step on the guide.

A second approach to increasing starting salaries is to build into your next salary guide very small increments between Steps 1 and 2. If the typical increment in your district is $700, and you make the increment between Step 1 and 2 just $250, you have boosted your minimum salary by $450 at no cost to any current employees. Done each year over the next five or six years, this will have a significant impact on your starting salaries. For further discussion and examples, see "The $250 Increment" in *School Leader,* July/August 1983.

If you desire an even more immediate increase in your starting salaries, insist that the first *three* steps on the guide be boosted, by inserting $250 increments between Steps 1, 2, 3, and 4 of your next guide. This, of course, will be more difficult for the union to accept because it will mean that junior employees on these steps will get bigger raises than some more senior employees. If you strongly believe that raising your minimums is an urgent district need, it is worth fighting the union on this point.

Both fairness and logic will support your position that the lower paid employees need and deserve more new dollars than the higher paid employees. The $14,000 employee generally finds it harder to make ends meet than the $22,000 employee; while you'll never convince the union that they should be paid the same salary (and there probably should be some recognition of experience in determining salaries), you may be able to succeed in bringing the lower employees up to the average salary faster than would occur without your efforts, and simultaneously improve your starting salaries significantly.

Balloon Steps

A balloon step is a very large increment that exists between the last step on the guide and the next to last step. This step can be two, three, or four times as large as the average increment on the guide.

Balloon steps are a fairly recent phenomenon, and are basically by-products of union attempts to undercut the concept of the salary guide. Traditionally, salary guides have had minimums, maximums, and incremental steps leading up to the maximum. New guides were constructed by giving all staff the same basic dollar or percentage increase, and in addition giving an experience increment to employees not yet at the top-of-the-guide. The result was that the employees at the maximums would get "less" than their colleagues. (Usually, "less" meant a lesser percentage, not fewer dollars.)

Unions began to complain that it wasn't fair for the employees at the maximum to get "less" than the rest of the staff. However, they were not always inclined to add steps to the guide, since this would mean it would take longer for the other staff to get to the top of the guide. The solution: add a bigger percentage at the top of the guide than to the other steps on the guide. Thus, while most employees got the basic increase plus an increment, the top-of-the-guide employees got a bigger percentage increase to make up for the lack of an increment.

The by-product? *The employee moving to the top step gets the biggest increase of all!* He or she gets the expanded increase that those already at the top are getting, plus the experience increment for moving up one more step on the guide.

When this practice is continued for three or four years, the spread between the top step and the step just below it grows tremendously. The outcome is a balloon step.

©1983 NJSBA

So what, you ask? If that's how the union wishes to distribute the money, why should a board object?

The reason is this: as the balloon step expands, it begins to take a substantial amount of money simply to pay for movement from that step to the top of the guide. Where normal increments are $500 and a balloon step exists of $2,000, it may cost as much as 1% or 2% of the salary base to pay for the cost of the balloon step. The union will argue that the money to pay for the balloon step is *extra* money over and above the negotiated increase. The union reasons that a settlement of 8% means approximately 8% for nearly everyone, not 6% for most employees and 16% for the balloon step employees.

Note the irony. The balloon step was created by the union's insistence on being "fair" to top-of-the-guide employees, but it demands now that only the school board be responsible for paying the tab! How do you avoid a balloon step? These four approaches will work:

1. add steps to the guide. By adding a new step each year, you are able to give the employees at maximum another increment, and therefore the same percentage or dollar increase as the rest of the staff.

2. give the employees at maximum *less* than the rest of the staff, in dollars or percentages. This can be done as follows: a) negotiate a total increase of perhaps 8% of last year's base; b) calculate the dollar cost of moving all employees up one step on the old guide; c) subtract this figure, perhaps 2%, from the 8% total settlement, and d) now increase all figures on the guide by the remaining 6%. Since the top-of-the-guide employees get no increment, their total increase will be just this 6%.

But don't feel too badly for these employees. Six percent of $26,515 (the average MA maximum salary) is much more money than 8% of $15,106 (the average MA minimum salary). Indeed, this six percent increase will yield a larger dollar raise than most of the unit will probably receive. Note also that the employee making $15,000 to $20,000 arguably needs the additional money more than the employee at maximum on the guide.

3. provide intermittent longevity payments. These are like increments but are usually paid only after 20, 25, and 30 years in the district and therefore only to employees on the maximum salary step. Through longevity payments a board can partially rebut the "fairness" argument without completely eliminating the concept of a maximum salary.

4. most importantly, never give a bigger percentage raise to the top of the guide than you provide to the other steps in the old guide.

How do you eliminate a balloon step that already exists? These three approaches are possible:

1. *add steps into the guide* to break up the balloon. Assume, for example, that your guide has fifteen steps, a BA maximum of $24,500, and a balloon step with a $2,500 increment compared to normal increments of $500. You could lengthen the guide to nineteen steps by *inserting* a new 15th, 16th, 17th and 18th step before the maximum, and putting the maximum at the 19th step. This would permit $500 increments throughout the guide. If the addition of four new steps is not acceptable to the union, a board might achieve at least two such steps, decreasing the balloon step somewhat. It might also be able to get more new steps by spreading them out over a two or three year contract.

2. *completely rewrite the guide,* making it significantly longer or shorter. If this kind of change is achieved, there will necessarily be a wide range of kinds of increases for employees with some gaining more than others. In such a general restructuring, the balloon step can be eliminated along with any other inequities that are being addressed, without its elimination becoming an issue unto itself.

3. *shorten the guide by one step,* and make the old second-to-last step the new maximum. Under this scheme, all employees who were on maximum are considered "off the guide" forever; they "float" above the guide. Their increases are negotiated as part of the general negotiations but their salaries are not connected to the guide. Essentially, a new shorter guide has been established that applies to all employees not yet at maximum, and those who had been at maximum are "grandfathered in" as entitled to salaries greater than the guide's maximum salaries.

The most difficult part of this last approach is getting union agreement on having no more employees "float" off the guide. If you don't insist that all employees now below maximum remain on guide hereafter, and not join the ranks of the off guide people, you will be agreeing to a guide with no true maximum at all—an "infinity guide."

This "infinity" approach has been adopted by a number of districts already. It basically disguises the first approach discussed, viz. adding steps to the guide, by not numbering these off guide steps. It has the advantage of avoiding a ballon step, but the disadvantage of encouraging very high top salaries to the detriment of the junior staff. It also deprives the junior staff of any hope of ever "catching up" to their more senior colleagues.

Reducing the Range between Minimums and Maximums

Many people believe there is no good reason to pay a teacher with 15 years experience $10,000, *more* than a teacher with 3 years experience, to teach the same number of students for the same hours per day and days per year. If your board believes that the gap between minimum (and near-minimum) salaries and maximum salaries is too great, there are a few things you can do. Obviously, however, they all involve giving more new dollars, in absolute or relative terms, to newer teachers than to more senior teachers. The acceptability of this proposition to a union depends in large measure on the percentage of teachers at or near maximum salaries in your district, and the location of the local union leadership on the salary guide.

1. Insist that all employees receive equal dollar increases rather than equal percentage increases. This will decrease the percentage range between the minimums and maximums substantially, although the actual dollar differences are unaffected.

2. If equal dollar increases are not acceptable to the

©1983 NJSBA

union, insist on at least a split in the distribution of new dollars, with at least one-half being distributed in equal dollars (perhaps $800 per employee) and the other half being distributed in equal percents (perhaps an additional 4% per employee over last year's salary). This will also decrease the percentage range, though more slowly than equal dollars would.

3. Boosting your starting salaries via $250 increments, as described above, will work to decrease the actual *dollar* range between your minimums and maximums, and will of course decrease the percentage range substantially. If you could insert $250 increments between steps 1, 2, 3, and 4 (a difficult task, to be sure), the salary ranges are compressed even more rapidly, and you actually decrease the differences among current staff, not just between new staff and current staff.

Decreasing the Length of the Guide

There is a move afoot to compress the length of salary guides from about 16 to 18 steps down to 10 to 12 steps. The unions argue that there is no valid reason for a teacher to wait 18 years to reach top pay. (The same unions argue that employees at maximum get "less" because they don't get increments, as discussed earlier. The contradiction is so obvious that a union usually doesn't argue both points in the same evening.)

There is a certain logic to the argument that an 18 step guide is too long. The solutions, however, all seem inadequate. The basic approach is to place employees with different years of service on the same step, e.g., employees on Step 1 and 2 this year all go to Step 3 next year, employees on Steps 3 and 4 all go to Step 5, etc., and then renumbering the steps to read Step 1 to 10. The problems are many:

1. either it is very expensive, because the union wants the county average increase for every teacher *plus* an extra increment for those staff members moving an extra step;

2. or it won't get ratified, because the employees not getting the extra increment vote it down;

3. in a few years some staff become disgruntled that people with less experience get the same salary, so they demand that you return to the traditional guide and that *they* get the extra increment this time;

4. the resulting guide has increments roughly twice as big as the prior guide. This will make it even more difficult to get the employees at maximum salary to accept the average increase *minus* the nearest increment. To satisfy this group, you will either begin to add steps to the guide, one per year, making a farce of the whole effort, or you will give these employees the same increases as the rest of the unit, resulting in a balloon step, or off guide salaries and an "infinity" guide.

The real problem with long guides is *not* the mere length of the guide, but the impact of the length on the *salary range* between minimum and maximum salaries. There are numerous ways to decrease this range, described earlier, that avoid the inherent problems that guide compression schemes contain.

A Modest Proposal for Performance Awards

It is possible to recognize outstanding individual teacher performance within the traditional structure of the salary guide, if two slight changes are made to your current contract. First, insert the following in the salary article in your contract:

> *The board of education retains the authority to move an employee an additional step on the salary guide in recognition of outstanding performance.*

Such movement would permanently elevate the employee above where he would otherwise be. Its attraction is that it doesn't demand any modification in the basic salary guide; all it does is permit the board to pay *more* than it would otherwise pay.

A second approach is to redefine the criteria for movement from one salary guide column to another, to include outstanding evaluations as a substitute for graduate credits. For example:

> *Movement from the BA column to the BA+30 column shall be conditioned upon proof of successful completion of thirty (30) graduate credits in education or in the subject area of the teacher's current assignment or certification, or twenty-four (24) such credits and the recommendation of the Superintendent based upon three consecutive years of outstanding evaluations in the district.*

For a list of all the reasons a union will oppose these two modest proposals, see "The Many Dimensions of the Merit Pay Issue" at page 38 of this book.

Conclusion

The problems we see in today's salary guides are our own fault. Either we constructed these guides, or more commonly we let the union do so unilaterally and we only performed a "cost out" to be sure their guides wouldn't cost more than the settlement called for.

To remedy these problems you have to let the union know, from the very first discussion of compensation, that the board is not satisfied with the current salary guide structure, and that it will make any and all proposals for increased compensation contingent on changes in the guide structure.

It is not critical that your offers be in the form of new guides, although in some cases that would be effective. It *is* critical that the union be made aware that the *quid pro quo* for increased salaries is meeting the board's needs on the distribution of those new monies.

©1983 NJSBA

COLLECTIVE BARGAINING AND EDUCATIONAL EXCELLENCE

A new school year brings renewed hope to those concerned with improving the quality of education that children will learn more through the increased effort of those responsible for providing quality education to them. School board members, administrators, teachers, and parents will all join together to achieve a common goal—educational excellence.

Unfortunately, many obstacles exist to achieving this goal, and several prominent ones arise in the context of negotiations between school boards and their organized employees.

The collective negotiations process is not geared to promote quality education, but to advance and protect the economic and personal interests of school employees. Frequently, however, concessions made at the bargaining table have a direct and adverse effect on the quality of the educational program.

A quick look at several areas can explain how this might happen, and in fact, has happened in many school districts.

Paid Time Off During the Regular School Day

Paid time off during the regular school day takes on many forms: preparation time, duty-free lunch, half-days off to allow for inservice programs or parent-teacher conferences, released time granted to certain extracurricular advisors, union leaders, etc. All this time off denies students more contact time with teachers. Although reasonable amounts of preparation and duty-free lunch time are desirable, union demands, if agreed to, to increase such time, directly translate into less student-teacher contact time, a key factor in achieving quality education.

Paid Days Off During the Normal School Year

This kind of paid time off again denies students access to their most valuable resource—their teachers. The granting of additional sick days beyond the statutory minimum or the unrestricted use of personal days reduces the total amount of time that teachers spend with students. The simple fact is that if days off are available, they will be used. Substitute teachers generally do not and cannot provide the same continuity of instruction that the regular teacher obviously provides.

Monitoring cases of sick leave abuse and taking appropriate action, when necessary, is one way of reducing the incidences of staff absenteeism. If, however, teachers may take three personal days each year without stating a specific and limited purpose, the likelihood is that many teachers will use most, if not all, of these days.

In addition to these two most common paid days off, unions demand other kinds of days off, and school boards sometimes agree to them. Paid days off to attend professional programs, visit other schools, attend union programs, or care for ill members of the family also appear in some negotiated agreements. Some of these days off may be warranted. But, after examining the total number of paid days off to which teachers are annually entitled, one should pause and reflect on the question of whose interests are the schools suppose to serve.

Length of the School Day and School Year

If it is true, as the slogan states (and as we believe), that "teachers care about kids," then why do their local organizations frequently demand reductions in the length of the school day or school year?

Demands designed to reduce the level of student-teacher contact time should be seen for what they really are—a concerted effort to reduce the level of work and responsibility for which employees are already being paid. Today, more than ever before in recent memory, the emphasis should be on more, not less, instructional time, and more, not less, accountability.

Allocation of Existing Financial Resources

Most people would agree that school employees deserve to make a fair salary, with reasonable benefits and working conditions. The challenge is to accomplish this goal while also ensuring that valuable educational programs remain intact or are expanded. There is only so much money in the pot, and how that money is divided among competing priorities is the dilemma that a school board faces.

Approximately seventy to eighty percent of a school budget is committed to employees' salaries and benefits. Much of the rest is linked to fixed costs, such as utilities, insurance, etc. An additional one percent salary increase could curtail or eliminate a valuable educational program, because teachers may have to be laid-off to pay for this additional pay increase. That is the hard decision a school board, not the union, must make.

Securing High Quality Staff

Perhaps the key to improving the quality of education is to attract more qualified individuals to the profession. This can only be done if starting salaries are competitive. Until recently, many school boards have neglected to pay enough attention to the construction of the salary guide, particularly as it relates to low starting salaries and to the inability to hire highly qualified teachers at some step higher than the first step on the guide.

Bargaining over the amount of new dollars is only one step; distribution of those dollars to provide for internal equity among *all* teachers for attractive starting salaries, and for the flexibility to hire new teachers at some step higher than the first step should be an important priority for school boards.

©1983 NJSBA

Summary

Experience has shown that bargaining in public education has not proven to be the means of improving education. We are now entering our sixteenth year of legislated bargaining, and the schools in New Jersey and throughout the country are under attack. A perfect assessment of the problem is beyond this publication, but it is fair to say that collective bargaining presents obstacles to educational excellence. Smart, hard bargaining minimizes the adverse consequences of the process.

Every union proposal should be evaluated in terms of its impact on your educational program. Your current contract should be reviewed, and board proposals for change made, if such changes would further educational excellence. Administrative practices, such as early dismissal for students, should be examined to see if they assist or deter the achievement of district instructional goals.

Collective bargaining, as stated earlier, was not created to help children. School boards have the duty to see that it hurts them as little as possible.

©1983 NJSBA

DECISIONS AFFECTING NEGOTIATIONS

Listed below are a number of court and PERC decisions which affect at-the-table bargaining behavior.[1]

Authority of a Board's Negotiating Team

Bergenfield Board of Education and Bergenfield Education Association, PERC No. 90, 1 **NJPER** 44. Unless otherwise noted, a board's negotiating team can bind the entire board to a tentative agreement.

Duty to Bargain in Good Faith

Galloway Township Board of Education v. Galloway Township Education Association, 78 NJ 25 (1978). The duty to negotiate changes in terms and conditions of employment exists during the life of an existing agreement.

State v. N.J. Council of State College Locals, 141 **N.J. Super.** 470 (App. Div. 1976). The obligation to negotiate in good faith does not include an obligation to make a concession on any given issue or to agree to the proposal of the other party.

Waiver/Suspension of Duty to Bargain

Caldwell-West Caldwell Education Association v. Caldwell-West Caldwell Board of Education, 180 **N.J. Super.** 440 (App. Div. 1980). Certain minor, non-recurrent types of workload increases which do not lengthen the negotiated workday and which stem directly from an educational policy decision are non-negotiable.

County of Middlesex (Roosevelt Hospital) and Communication Workers, Local 1065 and Roosevelt Hospital Association Inc., PERC No. 81-129, 7 **NJPER** 12118. A public employer must suspend bargaining with the majority representative during the pendency of a bonafide representation dispute.

New Jersey Institute of Technology and Newark College of Engineering Professional Staff Association, PERC No. 80-27, 5 **NJPER** 10202. Where increases in workload are "inescapably intertwined with and inseparable from" an educational policy decision, negotiations over the increased workload are not required.

Rutgers, The State University and AFSCME, Council 52 and Local 1761, PERC No. 80-26, 5 **NJPER** 10201. Clear contract language can constitute a waiver by the union of its right to negotiate a change in working hours.

Woodstown-Pilesgrove Regional High School District Board of Education v. Woodstown-Pilesgrove Regional Education Association, 81 **N.J.** 582 (1980). The effect of a management decision on terms and conditions of employment is not automatically negotiable, but depends upon whether the dominant issue primarily involves either an educational policy decision or a term and condition of employment.

Employer Conduct During Impasse

City of Jersey City and Local 246, Jersey City Public Employees, Inc., PERC No. 77-58, 3 **NJPER** 122. If a genuine impasse still exists after the parties have exhausted PERC's dispute resolution procedures, the employer may implement his last offer.

Galloway Township Board of Education and Galloway Township Education Association, 78 **N.J.** 1. A public employer may not refuse to pay increments contained in an expired agreement while negotiations are continuing for a successor agreement.

Piscataway Township Board of Education and Piscataway Township Education Association, PERC No. 91, 1 **NJPER** 49. A public employer may not alter the status quo of an expired contract while still negotiating a successor contract.

Scope of Negotiations

(Also check specific clauses in the "NJSBA Analysis of the NJEA Sample Agreement for 1984-85," at p.**51**.)

ASSIGNMENTS:

Carteret Education Association v. Carteret Board of Education, Docket No. A-419-79, unpublished App. Div. opinion, decided November 10, 1980. The decision to assign teachers to after school workshops that do not involve student supervision is a mandatorily negotiable term and condition of employment.

Long Branch Education Association, Inc. v. Board of Education of the City of Long Branch, Monmouth County, 150 **N.J. Super.** 262, affirmed, 73 **N.J.** 461 (1977). Assignment of teachers to lunchroom supervision is an educational policy decision, and is non-negotiable.

Ramapo-Indian Hills High School District Board of Education v. Ramapo-Indian Hills Education Association, 176 **N.J. Super.** 35 (App. Div. 1980). Decision to assign teachers to extracurricular activities and the work hours normally associated with these activities are non-negotiable.

DEFINITION OF SCOPE:

Paterson Police P.B.A., Local No. 1 v. City of Paterson, 87 **N.J.** 78 (1981). Even though a permissive category of negotiations for police and firefighters is constitutional, this category is narrowly restricted so as to preclude negotiations on matters which place "substantial limitations" on the governmental body's policy-making authority.

Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 **N.J.** 144, (1978). C.123 did not create a permissive category. Transfers, for example, are non-negotiable.

State of New Jersey v. State Supervisory Employees Association, State of New Jersey v. Local 195 IFPTE and Local 518 SEIU, 78 **N.J.** 54, (1978). General statutes giving authority to employers do not render negotiations over terms and conditions illegal. Specific statutes and regulations that govern terms and conditions of employment cannot be abrogated by contract.

DISCIPLINE:

New Providence Board of Education and New Providence Education Association, PERC No. 83-88, 9 **NJPER** 14038. Disciplinary determinations affecting tenured teachers may not be submitted to binding arbitration.

---

[1] PERC or the courts can alter case law at any time. Before relying on these decisions, please check to determine if they have been modified since the publication of this book. In addition, please keep in mind that this list is far from exhaustive and represents only a few decisions affecting selected bargaining issues.

©1983 NJSBA

Toms River Board of Education and Toms River School Bus Drivers' Association, PERC No. 83-148, 9 **NJPER** 14159. Disciplinary determinations affecting employees who are not eligible for statutory protection under the tenure law or any other statutory appeal procedure may be submitted to binding arbitration, where the contract so provides.

EVALUATIONS:

Bethlehem Township Board of Education v. Bethlehem Township Education Association, 81 **N.J.** 38 (1982). Tenured teacher evaluation procedures are negotiable as long as contracts do not conflict with State Board of Education rules. Related educational policy questions are non-negotiable.

Hazlet Township Board of Education v. Hazlet Township Teachers Association and Public Employment Relations Commission, Docket No. A-2875-78, unpublished App. Div. opinion, decided March 27, 1980. The application of evaluation criteria is not negotiable or arbitrable.

Teaneck Board of Education v. Teaneck Teachers Association, 161 N.J. Super. 75 (App. Div., 1978). Criteria for evaluation and the content of evaluations cannot be negotiated.

PREGNANCY-RELATED DISABILITY LEAVES AND SICK LEAVE BENEFITS DURING CHILDCARE LEAVES:

Board of Education of Cinnaminson v. Silver, 1976 S.L.D. 738, aff'd State Board, 1979 **S.L.D.** 817. Employees are entitled to use their accumulated sick leave because of pregnancy-related disability.

Castellano v. Linden Board of Education, 79 **N.J.** 407 (1979). Employers may neither deny employees with pregnancy-related disabilities the right to use accumulated sick leave nor establish a mandatory leave policy for pregnant teachers.

Dyson v. Montvale Board of Education, 1980 **S.L.D.** 833 affirmed, State Board 1981 **S.L.D.**____(March 3), affirmed, Docket No. A-3182-80T1, unpublished App. Div., decided February 8, 1982. A board may place an employee anticipating a disability leave on an involuntary unpaid leave prior to the disability period in order to protect educational continuity and avoid mid-semester staffing changes, but the employee will remain entitled to sick leave pay for the period of actual disability.

Gilchrist v. Board of Education of Haddonfield, 155 N.J. Super. 358 (App. Div., 1976). Nonrenewal of non-tenured pregnant teachers based on board policy minimizing classroom instruction interruptions is not discriminatory.

Hackensack Board of Education v. Hackensack Education Association, 184 N.J. Super. 311 (App. Div. 1982). According to the statutory provision on sick leave, sick leave may not be used for child rearing purposes by a non-disabled employee.

Logandro v. Cinnaminson Township Board of Education, 1979 **S.L.D.** 378, affirmed in part, State Board, 1980 **S.L.D.** 1511 (June 27); **Headley v. Board of Education of the Township of Jefferson, 1981 S.L.D.**____(Feb. 4), affirmed Docket No. A-2804-80, unpublished App. Div. opinion, decided Nov. 17, 1981. An employee who takes a voluntary leave of absence prior to his or her period of actual disability is not entitled to use sick leave during the period of actual disability.

REDUCTION IN FORCE:

Cinnaminson Township Board of Education v. Cinnaminson Teachers' Association, affirmed in part, Docket No. A-2682-77, unpublished App. Div. opinion, decided June 1, 1979, cert. denied 81 **N.J.** 341 (1979). The decision to RIF, and the incidental "impact," are non-negotiable.

Deptford Township Board of Education and Deptford Education Association, PERC No. 83-44, 8 **NJPER** 13285. Notice provisions relating to RIFs are required topics of bargaining.

Englewood Board of Education v. Englewood Teachers' Association, 150 **N.J. Super.** 265 (App. Div., 1977). The statutory power to reduce personnel cannot be the subject of negotiation or arbitration.

Maywood Board of Education v. Maywood Education Association, 168 **N.J. Super.** 45, cert. denied 81 **N.J.** 292 (1979). Impact of a RIF on the workload of remaining employees is non-negotiable.

SICK LEAVE, PERSONAL LEAVE, AND RETIREMENT:

Fair Lawn Education Association v. Fair Lawn Board of Education v. Teachers' Pension and Annuity Fund, Division of Pensions, Department of Treasury, State of New Jersey, 161 **N.J. Super.** 67, affirmed, 79 **N.J.** 574 (1979). Retirement incentive plans are illegal.

Hunterdon Central High School Board of Education v. The Hunterdon Central Regional High School Teachers' Association, 86 **N.J.** 43 (1981). Payment for religious observance without charging the leave to general personal leave or vacation time is unconstitutional.

Piscataway Township Board of Education v. Piscataway Maintenance and Custodial Association, 152 **N.J. Super.** 235 (App. Div 1977); **Ramsey Teachers Association v. Board of Education of the Borough of Ramsey,** unpublished App. Div. opinion, decided May 30, 1980. Blanket, extended sick leave contract clauses are illegal and unenforceable.

Piscataway Township Board of Education and Piscataway Education Association, PERC No. 82-64, 8 **NJPER** 13039. The establishment of a policy enabling the board to verify illness for which sick leave is claimed is not negotiable or arbitrable. However, the application of the policy may be subject to the contractual grievance procedure.

SUBCONTRACTING:

Local 195, IFPTE, AFL-CIO v. State of New Jersey, 176 **N.J. Super.** 85 (App. Div. 1980), affirmed in part, 88 **N.J.** 393 (1982). Subcontracting unit work to an outside contractor is not a required topic for negotiations.

Rutgers, The State University v. AFSCME, Council 52 and its Affiliate, Local Union No. 1761,____N.J. Super.___, decided May 18, 1983, Docket No. A-468-81T1. Shifting unit work from employees within the unit to other employees outside the unit is distinguishable from subcontracting and is a mandatory topic of negotiations.

WORKLOAD AND WORK YEAR:

Newark Board of Education v. Newark Teachers' Union, Local 481, A.F.T., AFL-CIO, Docket No. A-2060-78, unpublished App. Div. opinion, decided Feb. 26, 1980. Change in preparation periods constitutes a change in workload and is, therefore, mandatorily negotiable.

Piscataway Township Board of Education v. Piscataway Township Principals' Association, 164 **N.J. Super.** 98 (App. Div. 1978). The decision to reduce the work year from 12 months to 10 months is a required topic of negotiations.

Scope of Arbitrability

Bernards Township Board of Education v. Bernards Township Education Association, 79 **N.J.** 311 (1979). Withholding of an increment is not grievable to binding arbitration. Parties may negotiate advisory arbitration procedures to cover management prerogatives affecting individual employees.

Teaneck Board of Education v. Teaneck Teachers Association, 94 **N.J.** 9 (1983). Claims of racial discrimination in public employment may not proceed to binding arbitration; claims may proceed to advisory arbitration and to the Division of Civil Rights.

Unit Determination and Supervisors

Cinnaminson Township Board of Education and Cinnaminson Township Teachers' Association, D.R. No. 81-39, 7 **NJPER** 12122. Department heads may be excluded from a teachers' bargaining unit when the board adopts a new job description which places department heads in a supervisory capacity over teachers.

Ramapo-Indian Hills Regional Board of Education and Ramapo-Indian Hills Education Association, D.R. No. 81-26, 7 **NJPER** 12048. Department heads who are declared supervisors under the Act may be excluded from teachers' bargaining unit.

©1983 NJSBA

A SELECTED BIBLIOGRAPHY

Books

ABODEELY, JOHN E., RANDI C. HAMMER and ANDREW L. SANDLER. ***The NLRB and The Appropriate Bargaining Unit.*** Philadelphia, Pennsylvania: the Wharton School, University of Pennsylvania, 1981, 359 pp.

ELKOURI, FRANK and EDNA ASPER ELKOURI. ***How Arbitration Works.*** Third Edition. Washington, D.C.: The Bureau of National Affairs, 1973, 819 pp.

GASWIRTH, MARC, and GARRY WHALEN. ***Collective Negotiations.*** Trenton, New Jersey: New Jersey School Boards Association, 1983, 122 pp.

GASWIRTH, MARC, GARRY WHALEN and CATHLEEN OTTO. ***Administering the Negotiated Agreement.*** Trenton, New Jersey: New Jersey School Boards Association, 1980, 200 pp.

GASWIRTH, MARC, WILLIAM M. WEINBERG and BARBARA E. KEMMERER. ***Teachers' Strikes in New Jersey.*** Metuchen, New Jersey: Scarecrow Press, 1982, 166 pp.

IGOE, JOSEPH A. and DOUGLAS M. FLYNN. ***The School Board Negotiator: Guidelines for Effective Teacher Negotiations.*** Albany, New York: Thealan Associates, Inc., 1972, 189 pp.

JOHNSON, HOMER M. and WILLIAM W. MONAHAN. ***School Strike: Preventive and Emergency Procedures.*** Morristown, New Jersey: Robert F. Strauss and Associates, 1975, 92 pp.

LIEBERMAN, MYRON. ***Bargaining.*** Chicago, Illinois: Teach 'em Inc., 1979, 333 pp.

O'NEIL, ROY. ***Counterproposals for School Boards in Teacher Negotiations.*** Aurora, Illinois: Countersearch, 1972, 255 pp.

PATTERSON, LEE T. and JOHN LIEBERT. ***Management Strike Handbook.*** Chicago, Illinois: International Personnel Management Association, 1974, 43 pp.

SIMKIN, WILLIAM E. ***Mediation and the Dynamics of Collective Bargaining.*** Washington, D.C.: The Bureau of National Affairs, Inc., 1971, 410 pp.

WHALEN, GARRY M., CATHLEEN OTTO and BRUCE TAYLOR. ***The Public Employment Relations Law.*** Trenton, New Jersey: New Jersey School Boards Association, 1979, 103 pp.

Work Stoppage Strategies. AASA Executive Handbook Series VI. Arlington, Virginia: American Association of School Administrators, 1975, 55 pp.

Bulletins, Pamphlets, Reports and Articles

AMERICAN ARBITRATION ASSOCIATION, ***Voluntary Labor Arbitration Rules of the American Arbitration Association.*** New York, New York: 8 pp.

GASWIRTH, MARC. "The Board President and Labor Relations," ***Handbook of Effective Leadership.*** Trenton, New Jersey: New Jersey School Boards Association, 1980.

KUNDER, LINDA H. ***Contingency Planning for Teacher Strikes.*** Arlington, Virginia: Educational Research Service, Inc. 1980. 58 pp.

WARY, CURT. ***Costing Out the Labor Agreement.*** Trenton, New Jersey: New Jersey School Boards Association, 1982, 27 pp.

SIEGAL, BOAZ. ***Proving Your Arbitration Case.*** Washington, D.C.: Bureau of National Affairs, Inc., 1967, 48 pp.

STRASSMAN, ESTHER R.: ***An Analysis of Teachers' Contracts in New Jersey, 1982-83/1983-84.*** Trenton, New Jersey: New Jersey School Boards Association, 1983, 115 pp.

ZACK, ARNOLD. ***Understanding Grievance Arbitration in the Public Sector.*** Washington, D.C.: U.S. Department of Labor, 1974, 37 pp.

—Understanding Factfinding and Arbitration in the Public Sector. Washington, D.C.: U.S. Department of Labor, 1974, 38 pp.

Regular Publications Dealing With Negotiations

(These may be ordered on a subscription basis from the respective publisher)

American Arbitration Association. ***Arbitration In The Schools.*** 140 West 51 Street, New York, New York 10020, issued monthly.

Bureau of National Affairs, Inc. ***Government Employee Relations Report.*** Washington, D.C. 20037, issued weekly.

Labor Relations Press. ***New Jersey Public Employee Reporter.*** P.O. Box 479, Fort Washington, Pennsylvania 19034, issued biweekly.

Negotiations Management Service, a Division of Educational Services Bureau, Inc. ***Negotiations Management.*** 1835 K Street, N.W., Washington, D.C. 20006, issued monthly during the school year.

New Jersey School Boards Association. ***Index and Analysis of PERC Decisions.*** P.O. Box 909, 315 West State Street, Trenton, New Jersey 08605, monthly supplements, semiannual updates.

NJSBA ANALYSIS OF THE NJEA SAMPLE AGREEMENT FOR 1984-85

Our analysis of the NJEA Sample Agreement continues to change each year because of changes in the laws governing negotiations and in trends and patterns in bargaining demands. Use our analysis when reviewing your present contract as you prepare for negotiations, and when reviewing the union's proposals and counterproposals.

In addition, be certain to analyze any proposed changes in your present contract **in the context of the rest of the contract.** A particular proposal might be acceptable on its own, but becomes unacceptable when viewed in tandem with other parts of the contract.

On the left of each page appears the text of the NJEA Sample Agreement. On the right of each page appears our commentary. References to **PERC** refer to **What Every School Board Member Should Know About the PERC Law** (copyright 1979, NJSBA); references to **Administering the Negotiated Agreement** refer to Volume 7 in NJSBA's School Board Library Series (copyright 1980).

PREAMBLE

This Agreement entered into this day of 19 , by and between the Board of Education of ,The City of New Jersey, hereinafter called the "Board," and Association, hereinafter called the "Association."

WITNESSETH:

WHEREAS, the Board and the Association recognize and declare that providing a quality education for the students of the School District is their primary aim and that the character of such education depends predominantly upon the quality of teaching, the availability of materials, the functional utility of facilities, the release of imagination in planning, the application of democratic processes in administration, and the maintenance of high morale among the teaching faculty, and

WHEREAS, the members of the teaching profession are particularly qualified to advise the formulation of policies and programs designed to improve educational standards, and

WHEREAS, the Board has an obligation, pursuant to Chapter 303, Public Laws 1968 to negotiate with the Association as the representative of employees hereinafter designated with respect to the terms and conditions of employment, and

WHEREAS, the parties have reached certain understandings which they desire to confirm in this Agreement, be it

RESOLVED, in consideration of the following mutual covenants, it is hereby agreed as follows:

Article I, *Recognition*

A. Unit

The Board hereby recognizes the Association as the exclusive and sole representative for collective negotiation concerning grievances and terms and conditions of employment for all personnel whether under contract, on leave, on a per diem basis, employed or to be employed by the Board, but excluding:

(Insert positions excluded from the negotiating unit.)

This section notes the date the contract was entered and is standard and acceptable.

The primary purposes of a labor agreement are: (1) to state the terms and conditions of employment of employees; (2) to place limitations on the ability of the employer to change those terms and conditions; and (3) to specify certain kinds of duties or requirements of employees. If a clause in the contract does not fulfill one or more of these purposes, it is extraneous.

The first two whereas clauses are illegal topics of negotiation. **Fairview Board of Education,** PERC No. 80-18.

The clauses in this section are extraneous. It is better deleted inasmuch as it may be used by an arbitrator or other third party to modify the meaning of the Agreement. The General Counsel of the NEA states: *"From a strict legal point of view they are not necessary. They may, however, be viewed by an arbitrator or a court as providing a clue to the intention of the parties in construing ambiguous provisions in the agreement. If such statements are to be included, therefore, the language should be carefully drafted."* (See **The Law and Practice of Teacher Negotiations,** 3:16, cited in **Bibliography,** earlier.)

This is standard language.

The definition of the bargaining unit is very important. The board has the same right as the union to insist upon the proper negotiation unit. The unit should be limited to classifications of employees which have what is called a "community of interest." In a teachers' unit, this would include all certificated teaching personnel under contract. The unit may also include nurses, psychologists, and social workers. The unit will differ from district to district.

A few districts have "mixed units" containing certificated personnel and some or all of the non-professional employees in the district.

Under Chapter 123, the superintendent and assistant superintendent must be excluded from

©1983 NJSBA

all bargaining units. Confidential employees also are excluded from bargaining units under Chapter 123. Should the board have any questions concerning the appropriateness of the bargaining unit as constituted, it may file with PERC a petition for clarification of unit. In addition, new supervisory bargaining units may not be represented by unions which admit non-supervisors to membership (such as the NJEA). Nor can a unit formed after 1968 contain supervisors and non-supervisors. PERC has recently held that persons designated to evaluate teachers are supervisors under the PERC law and may not remain in the teachers' bargaining unit. **Cinnaminson,** D.R. No. 81-39. (For a full discussion of bargaining units see **PERC,** Chapter Two, "Representation.")

PERC's Director of Representation has ruled that substitute teachers who meet certain strict criteria have the right to negotiate under Chapter 123. **Bridgewater-Raritan Board of Education,** D.R. No. 79-12.

For more information on bargaining units, see "Bargaining Units: Consolidation, Severance, and Additions," in **Negotiations 1983.**

B. Definition of Teacher

Unless otherwise indicated, the term "teachers," when used hereinafter in this Agreement, shall refer to all professional employees represented by the Association in the negotiating unit as above defined, and references to male teachers shall include female teachers.

Paragraph B means that every right granted a classroom teacher applies equally to all professionals who are not classroom teachers. The board may wish to reserve certain rights and privileges only to classroom teachers and/or to full-time employees, such as preparation periods or tuition reimbursement. Whether or not you have such a definition, be careful to specify when a contract clause does not apply to all employees.

Article II, *Negotiation of Successor Agreement*

A. Deadline Date

The parties agree to enter into collective negotiation over a successor Agreement in accordance with Chapter 123, Public Laws 1975 in a good-faith effort to reach agreement on all matters concerning the terms and conditions of teachers' employment. Such negotiations shall begin not later than August 1 of the calendar year preceding the calendar year in which this Agreement expires. Any agreement so negotiated shall apply to all teachers, be reduced to writing, be signed by the Board and the Association, and be adopted by the Board.

Under the Rules and Regulations of PERC, there is now a beginning date for negotiations on successor agreements. This year it is December 7. If the parties agree to begin at a later date they may do so.

The Sample Agreement would begin bargaining on or before August 1st. In effect, boards would be bargaining over a successor to a contract **which has not even taken effect.** Generally it is better for boards to begin negotiations late in the Fall. If proposals are exchanged in December and actual

B. Grants from Federal or State Agencies

The Board agrees that the procedure set forth in this ARTICLE shall be applicable to the determination and implementation of the grants to be requested by the Board pursuant to any federal and/or state laws, provided; however, that the relevant time-table shall be shortened if necessary to comply with time requirements in making or processing applications under the relevant federal or state laws.

C. Increase in State Aid

The Board agrees to reopen negotiations and permit amendments to any section of this Agreement whenever state and/or federal funds in addition to and/or in excess of those amounts previously anticipated for the fiscal year(s) covered by this Agreement have been appropriated. The Board shall so inform the Association within five (5) days of its notification of the amounts to be received in such subsequent state and/or federal appropriation.

D. Modification

This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.

Article III, *Grievance Procedure*

negotiations are begun in January, so much the better. Beginning negotiations earlier than this will not lead to an earlier settlement; it will mean more hours at the bargaining table, and may mean more concessions by the board along the way.

Regarding the last sentence: you should always notify the union prior to negotiations that the full board of education retains the right to ratify or reject any agreements reached during negotiations. Boards should not agree to a clause like this last sentence.

Boards should reject B. and C. These call for automatic reopening of a contract in certain circumstances. When the contract is reached, it is preferable that it resolve all issues for its entire term. No mention is made, it is noted, of reopening negotiations in the event of a **decrease** in State or Federal aid. No New Jersey boards have agreed to such clauses.

Section D. is a standard clause and should be retained in the agreement.

The grievance procedure may be the most important section of any contract. Ideally, a grievance procedure will define a grievance, identify who may file a grievance, set a time limit on the filing of a grievance and detail individual steps through which a grievance must pass. Grievance procedures can provide a positive means for resolution of disputes.

For a thorough analysis of the legal and practical considerations that affect grievance procedures, see **Administering the Negotiated Agreement,** pp. 1-24. This book also contains a sample grievance procedure at Appendix D which modifies much of the NJEA Sample Agreement language to make it more workable for school boards and administrators.

A. Definitions

1. Grievance

A "grievance" is a claim by a teacher or the Association based upon the interpretation, application, or violation of this Agreement, policies or administrative decisions and practices affecting a teacher or a group of teachers.

The definition of a grievance should be limited to the **mandatory definition of grievance** established in the Supreme Court's **West Windsor** decision, 78 **N.J.** 98 (1978). In that case the Court stated that all grievance procedures must permit grievances over the interpretation, application or alleged violation of negotiated agreements, board policies and administrative decisions affecting employees' **terms and conditions of employment.** A later case **permits** employers to negotiate a grievance procedure over non-terms and conditions of employment, such as class size, as long as such a procedure **does not end in binding arbitration. Bernards Township,** 79 **N.J.** 311 (1979).

Therefore, if a board does not specifically limit its grievance procedure to terms and conditions of employment, it risks having PERC or an arbitrator misinterpret it to allow grievances over **virtually any topic at all,** as long as such grievances do not proceed to binding arbitration. This risk is especially high if your present grievance procedure ends in **advisory arbitration.** See **Watchung Hills Regional,** PERC No. 81-86.

To avoid this problem, delete the NJEA Model Agreement phrase, "a teacher or group of teachers" and substitute, "the terms and conditions of employment of a teacher or group of teachers."

Even with this definition of a grievance, a board should not agree to permit all such grievances to go to binding arbitration. (Binding arbitration, of course, is a negotiable topic, **not** a mandate. You may have binding arbitration for some, all or none of the grievances in your district that concern terms and conditions of employment.)

Boards which have agreed to an arbitration clause should only agree to submit grievances to binding arbitration which arise under the express terms of the agreement. Grievances over "board policies and administrative decisions and practices" should not fall under an arbitration clause.

Grievances concerning "policies" should start and end with the board. Grievances concerning "administrative decisions" might start with the administrator responsible for the decision and end with the board. Grievances over statutes and regulations should start with the superintendent and end at the board, subject to appeal to the appropriate administrative agency. See **Administering the Negotiated Agreement,** pp. 18-23.

Boards should avoid agreeing to a grievance definition that includes "practices" as grievable, because the word is too ambiguous: consistent practices, known practices, building practices, grade practices, random practices or individual supervisor practices?

2. Aggrieved person

An "aggrieved person" is the person or persons or the Association making the claim.

3. Party in interest

A "party in interest" is the person or persons making the claim and any person including the Association or the Board, who might be required to take action or against whom action might be taken in order to resolve the claim.

Who May File a Grievance: The Supreme Court decided on August 3, 1978, that the majority representative union has the constitutional and statutory right to present grievances on behalf of employees, and that this right cannot be waived through contrary contractual language. The case, involving the **Red Bank Regional Board of Education,** 78 **N.J.** 122, thus prohibits the negotiation of a clause to restrict the filing of grievances to individual employees. The Court decision assumed that individuals have a concurrent right to present grievances themselves; it did not address whether a union can file a grievance against the wishes of the affected employee.

B. Purpose

The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may from time to time arise affecting teachers. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

The purpose of the grievance procedure is not to achieve "equitable" solutions, but to resolve differences concerning the **rights** of the parties regarding the terms and conditions of employment of the employees covered by the contract. The sample language grants unlimited discretion to an arbitrator to fashion an "equitable" solution according to his or her personal definition of justice. This is too broad a grant of authority to an arbitrator.

C. Procedure

1. Time limits

The number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

2. Year end grievances

In the event a grievance is filed at such time that it cannot be processed through all the steps in this grievance procedure by the end of the school year, and, if left

Time Limit: The Sample Agreement places rigid time limits on the board's administrative personnel but places no time limit on the grievant. It is in the interest of the parties that a time limitation be placed in the contract. If you find that you do not have enough time at any step to adequately consider unresolved until the beginning of the following school year, could result in irreparable harm to a party in interest the time limits set forth herein shall be reduced so that the grievance procedure may be exhausted prior to the end of the school year or as soon thereafter as is practicable.

3. Level one—principal or immediate superior

A teacher with a grievance shall first discuss it with his principal or immediate superior, either directly or through the Association's designated representative, with the objective of resolving the matter informally.

4. Level two—superintendent

If the aggrieved person is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within five (5) school days after the presentation of the grievance, he may file the grievance in writing with the Association within five (5) schools days after the decision at Level One or ten (10) school days after the grievance was presented, whichever is sooner. Within five (5) school days after receiving the written grievance, the Association shall refer it to the superintendent of schools.

a grievance, propose different time limitations. The contracts in the private sector often place a 3 day limit on the initial filing of grievances. While this may seem unduly restrictive, two weeks would not seem so. This time limit should appear prior to or in the first step of the procedure.

The phrase "should be considered" is unnecessary and should be replaced by the word "is".

The Sample Agreement's procedure begins with the principal or immediate superior and goes on to the superintendent. Those boards which have department chairmen may wish to involve these supervisors in the grievance procedure.

The practice in nearly all districts in New Jersey is to provide that the board of education is a formal step in the grievance procedure, hearing grievances appealed beyond the superintendent's level. Most boards feel it is their obligation to receive and act on employee grievances directly.

There is another school of thought, however, which states that a board should engage only in policy-**making** and that grievances are really only concerned with the **implementation** of the board's policies, which is an **administrative** function.

If your board believes that it spends too much time reviewing employee grievances, consider negotiating yourselves out of the process. Instruct your chief school administrator to consult with you on the more complex grievances, and to use his administrative judgment on the others. For some boards, removing themselves from grievance handling may "de-politicize" district labor relations substantially, as well as free up board time for policy functions while buttressing the authority of the administration. It may be particularly appropriate for the board to delete itself from the grievance procedure if most grievances the board handles proceed to arbitration anyway.

The appropriate role for the board in your district's grievance procedure will depend on the number of grievances that arise, your relations with the administration and the union and the other demands on your time.

5. Level three—arbitration

(a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days after the grievance was delivered to the superintendent, he may, within five (5) school days after a decision by the superintendent or fifteen (15) school days after the grievance was delivered to the superintendent, whichever is sooner, request in writing that the Association submit its grievance to arbitration. If the Association determines that the grievance is meritorious, it may submit the grievance to arbitration within fifteen (15) school days after receipt of a request by the aggrieved person.

(b) Within ten (10) school days after such written notice of submission to arbitration, the Board and the Association shall attempt to agree upon a mutually acceptable arbitrator and shall obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of arbitrators may be made to the American Arbitration Association by either party. The parties shall then be bound by the rules and procedures of the American Arbitration Association.

(c) The arbitrator's decision shall be in writing and shall be submitted to the Board and the Association and shall be final and binding on the parties.

Boards differ on whether they desire to have themselves, advisory or binding arbitration as the last step of the grievance procedure. 35% of school boards have not agreed to binding arbitration. No board is required to agree to binding arbitration. Prior to doing so you should be sure that you can operate the school system adequately with the definition of a grievance and the contract clauses to which you have agreed. Binding arbitration can prove harmful especially where you have agreed to a "savings clause," or a "past practice clause." Remember, no matter how responsible you believe the union to be, expect the organization to seek the most favorable (in their eyes) interpretation of a given clause. Can you now live with that interpretation? The amount of no or yes answers you give to this question may help you determine whether you desire to agree to binding arbitration.

If the union is intent on gaining binding grievance arbitration, they should be willing to remove any "past practice" clause. In addition, the board should insist on a "no strike or work stoppage" clause.

In order to limit what may be arbitrated, the contract should contain an express limitation such as the following: *The only grievances which may be arbitrated are those alleging that there has been a violation of the express, written terms of the locally negotiated agreement. The arbitrator shall have no authority to rule on grievances which concern the interpretation, application, or alleged violation of board policies and administrative decisions affecting terms and conditions of employment, or of statutes and regulations setting terms and conditions of employment.*

The following language should also be contained in any arbitration clause to limit the arbitrator to his or her proper role: *"The arbitrator shall be limited to the issues submitted and shall consider nothing else. The arbitrator can add nothing to nor subtract anything from the Agreement between the parties."*

(d) In the event that arbitrability of a grievance is at issue between the parties, jurisdiction to resolve the issue shall rest solely with the arbitrator selected in accordance with the provisions of Section C.5 (b) of this Article.

(e) The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary travel, subsistence expenses and the cost

Boards should not agree to 5.d. This clause is designed to remove PERC and the courts from making decisions on what is negotiable and arbitrable, and is not in the best interest of the of the hearing room shall be borne equally by the Board and the Association. Any other expenses incurred shall be paid by the party incurring same.

D. Rights of Teachers to Representation

1. Teacher and association

Any aggrieved person may be represented at all stages of the grievance procedure by himself, or at his option by representative(s) selected or approved by the Association. When a teacher is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

2. Reprisals

No reprisals of any kind shall be taken by the Board or by any member of the administration against any party in interest, any representative, any member of the Association, or any other participant in the grievance procedure by reason of such participation.

E. Miscellaneous

1. Group grievance

If, in the judgment of the Association, a grievance affects a group or class of teachers, the Association may submit such grievance in writing to the superintendent directly and the processing of such grievance shall be commenced at Level Two. The Association may process such a grievance through all levels of the grievance procedure even though the aggrieved person does not wish to do so.

2. Written decisions

Decisions rendered at Level One which are unsatisfactory to the aggrieved person and all decisions rendered at Levels Two and Three of the grievance procedure shall be in writing setting forth the decision and the reasons therefore and shall be transmitted promptly to all parties in interest and to the Association. Decisions rendered at Level Three shall be in accordance with the procedures set forth in Section C, paragraph 5 (c) of this ARTICLE.

3. Separate grievance file

All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file and shall not be kept in the personnel file of any of the participants.

4. Forms

Forms for filing grievances, serving notices, taking appeals, making reports and recommendations, and other necessary documents shall be prepared jointly by the superintendent and the Association and given appropriate distribution so as to facilitate operation of the grievance procedure.

board. 5.e. is standard. See **Administering the Negotiated Agreement,** pp. 83-85 and pp. 131-133 for a detailed discussion of arbitrability.

D.1. This is standard language. The first sentence is a paraphrase of law regarding the right to Association representation. It implies, however, that an employee can demand to represent himself during arbitration, not likely the intent of the clause. The second sentence is general labor relations practice.

D.2. is a paraphrase of law. These protections are guaranteed by the law and need not be included in the contract. The inclusion of such a clause implies that, without the clause, the board **would** engage in reprisals against employees for filing grievances. Agreeing to the clause indicates to your staff that the union has won for them protection against board retaliation which, in fact, wouldn't occur anyway.

E.1. Note that the grievance would begin with the superintendent rather than the principal or immediate supervisor. This would be acceptable, with this addition at the end of the first sentence: *"where the administrator handling grievances at Level One of this procedure does not have the authority to resolve the grievance."*

The second sentence is merely **negotiable** beyond Level One of the procedure. There is no statutory right for a union to process grievances beyond Level One.

E.2. You retain the flexibility to agree on various approaches to your procedure. Some boards have highly formalized procedures, with written answers on prepared forms. Others find an informal approach more useful. Use what works for you.

The joint agreement on forms for filing grievances is a standard procedure. However, there need be no agreement to jointly construct forms for the balance of items listed in E.4.

©1983 NJSBA

5. Meetings and hearings

All meetings and hearings under this procedure shall not be conducted in public and shall include only such parties in interest and their designated or selected representatives, heretofore referred to in this ARTICLE.

Article IV, *Teacher Rights*

A. Rights and Protection in Representation

Pursuant to Chapter 123, Public Laws 1975, the Board hereby agrees that every employee of the Board shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a duly selected body exercising governmental power under the laws of the State of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any teacher in the enjoyment of any rights conferred by Chapter 123, Public Laws 1975 or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any teacher with respect to hours, wages, or any terms or conditions of employment by reason of his membership in the Association and its affiliates, his participation in any activities of the Association and its affiliates, collective negotiations with the Board, or his institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

B. Statutory Savings Clause

Nothing contained herein shall be construed to deny or restrict to any teacher such rights as he may have under New Jersey School Laws or other applicable laws and regulations. The rights granted to teachers hereunder shall be deemed to be in addition to those provided elsewhere.

A "Sample Grievance Form" is contained in **Administering the Negotiated Agreement** at p. 200.

E.5. is a standard clause. It cannot be used, however, to deny an employee any rights he has under the "Sunshine Law" to compel a public discussion of his grievance. See **New Milford Board of Education,** PERC No. 81-36.

This is an example of an unnecessary commitment to a paraphrase of law. The PERC law provides: "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of reprisal, to form, join and assist any employee organization or to refrain from any such activity." Note that the Sample Agreement language does not protect employees who don't join the NJEA, although the PERC law does.

School boards should also avoid the phrase beginning on the fourth line of paragraph A: *"and other concerted activities for mutual aid and protection."* This is not defined, but is an addition to the PERC law language, and could be used by the union to justify illegal job actions and strikes.

Note that paragraph A incorporates not only the PERC law, but also all "other laws of New Jersey or the Constitutions of New Jersey and the United States"! Paragraph B. incorporates all "other applicable laws and regulations," meaning Federal statutes.

Boards should generally refrain from placing statutory provisions in labor agreements. Certainly, your contract shouldn't incorporate by reference Federal statutes, nor the State and Federal constitutions. If references must be made to law, they should be **specific** references, not paraphrases. Furthermore, boards should think twice before agreeing to allow arbitrators to make determinations on the meaning of statutes. An arbitration clause that is limited to the "terms of this agreement" would probably permit an arbitrator to rule on alleged violations of statutes which are referenced in the agreement. **The arbitration clause can be as narrow as the parties make it.**

You can exclude disputes over statutory terms and conditions of

©1983 NJSBA

employment from arbitration with language such as the following:

> *Alleged violations of Article IV. A. and B. may be appealed before the Public Employment Relations Commission, the State Commissioner of Education, the State Board of Education, or other appropriate legal forums, and shall not be arbitrable under Article III of this agreement.*

If your contract presently has clauses such as A. and B. above, and the union adamantly refuses to 1) delete them (your first choice) or 2) make them not arbitrable (your second choice), consider a third option. Limit the employee to a choice of arbitration **or** some other legal forum, but in no case both. Certainly a negotiated agreement can block an employee's access to arbitration when he chooses to go to a governmental agency or the courts, since arbitration can be as narrow as the parties agree to make it. Under the **State of New Jersey** decision, 78 **N.J.** 54 (1978), it may be that an employee can waive his access on a certain issue to a statutory forum such as the Commissioner of Education as the **quid pro quo** for arbitrating a grievance on that issue. The following language would have this result:

> *An employee who chooses to arbitrate a grievance alleging a violation or misinterpretation of this clause shall be precluded from submitting the same grievance or complaint to any other legal forum. An employee who files a grievance or complaint in any other legal forum regarding the rights delineated in this paragraph shall be precluded from submitting the same grievance to arbitration.*

Consult your attorney if you are interested in this approach.

C. Just Cause Provision

No teacher shall be discharged, disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage, or given an adverse evaluation of his professional services without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

Virtually all of paragraph C. involves illegal topics for negotiations.

- The decision to non-renew a teacher for poor performance is not arbitrable. **Bethlehem,** PERC No. 80-5.
- The decision to non-renew a teacher due to a RIF is not arbitrable. **Maywood,** 168 **N.J. Super.** 45. (1979).
- Withholding of increments cannot be grieved to binding arbitration. **Bernards Twp.,** 79 **N.J.** 311 (1979).
- Professional advantages, if referring

to assignments, or to the availability of aides, is non-negotiable. **Rahway,** PERC No. 79-30; **North Bergen,** PERC No. 82-109.

- Transfers are not arbitrable. **Jefferson,** PERC No. 80-21.
- Adverse evaluations are not arbitrable. **Mahwah,** PERC No. 81-44.

Recent PERC decisions have held the following types of discipline of nonprofessional employees to be arbitrable:

- discharge of a bus driver. **Toms River,** PERC No. 83-148
- suspension or discharge of non-tenured custodians. **Willingboro,** PERC No. 83-147.

PERC has not yet addressed whether any form of discipline against professional employees can ever be arbitrable. Until it does so, boards should assume that the Commissioner of Education is the sole forum for review of discipline against teaching staff members, and refuse to agree to a just cause clause covering such employees. Boards should also avoid such clauses regarding non-professional staff, in order to retain the most flexibility for the administration regarding discipline of custodians and other nonprofessionals.

D. Required Meetings or Hearings

Whenever any teacher is required to appear before any administrator or supervisor, Board or any committee, member, representative or agent thereof concerning any matter which could adversely affect the continuation of that teacher in his office, position or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have representative(s) of the Association present to advise him and represent him during such meeting or interview. Any suspension of a teacher pending charges shall be with pay.

An employee has a statutory right to representation in an investigatory meeting which he reasonably believes could result in discipline. **North Warren Regional Board of Education,** PERC No. 79-9. Much of this clause is therefore unnecessary. But note that this right does not apply to evaluation conferences. Before agreeing to any clause such as this, boards should insist on knowing exactly what meetings the union has in mind.

E. Evaluation of Students

The teacher shall maintain the exclusive right and responsibility to determine grades and other evaluations of students within the grading policies of the School District based upon his professional judgment of available criteria pertinent to any given subject area or activity to which he is responsible. No grade or evaluation shall be changed without approval of the teacher.

The **Ridgefield Park** decision renders this an illegal subject. But even prior to that decision, it seemed clear that the clause was a violation of law. In a decision by the Acting Commissioner of Education in July, 1977, the following appeared:

> *It is essential that local boards must retain such authority of review to prevent assignment of unreasonable or arbitrary grades. The acts of teachers may neither be insulated from administrative review of their supervisors and administrators nor*

from quasi-judicial review by the Commissioner or judicial review by the courts. **Talarsky v. Edison Township Board of Education,** 1977 **S.L.D.** 862.

F. Criticism of Teachers

Any question or criticism by a supervisor, administrator, or board member of a teacher and his instructional methodology shall be made in confidence and not in the presence of students, parents, or other public gatherings.

G. Association Identification

No teacher shall be prevented from wearing pins or other identification of membership in the Association or its affiliates.

This section, if enforced in every case, probably would run counter to the Sunshine Law. Court decisions have determined that it is the individual employee who can select or reject public discussion of a personnel matter. The union cannot waive individual rights. If a teacher, for example, desires a discussion of his or her teaching performance to be held in public, the intent of this clause would have to be violated by the board as it complied with the Open Public Meetings Act.

Article V, *Association Rights and Privileges*

A. Information

The board agrees to furnish to the Association in response to reasonable requests from time to time all available information concerning the educational program and the financial resources of the district, including but not limited to: class size, number of specialists, annual financial reports and audits, register of certificated personnel, tentative budgetary requirements and allocations, agendas and minutes of all Board meetings, census data, individual and group teacher health insurance premiums and experience figures, names and addresses of all teachers, and such other information that shall assist the Association in developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students, together with information which may be necessary for the Association to process any grievance or complaint.

A. goes well beyond the legal requirements to provide information. First, the union's right to certain information will rest on an interpretation of Chapter 123. Therefore, there is no need for this clause in the contract. Second, the sample language guarantees that the board will supply data that has little or no relevance to collective negotiations. Particularly disturbing is the reference to "tentative budgetary requirements and allocations," whatever that means.

Unions generally have a right to information possessed by the employer which is **reasonably** needed to carry out the union's duty to negotiate on behalf of its members or to fairly process grievances. If you are presented with a demand which you believe goes beyond these standards, consult your board attorney or professional negotiator.

The reference in the latter part of this clause to "developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students" is inappropriate in a labor contract and is probably an illegal topic of negotiations.

The balance of Article V grants certain rights to the union. You are under no legal obligation to grant any of these rights.

B. Released Time for Meetings

Whenever any representative of the Association or any teacher participates during working hours in negotiations, grievance proceedings, conferences, or meetings, he shall suffer no loss in pay.

B. could be agreed to if the "no loss of pay" provision covered employees **mutually scheduled** to participate in union activities.

©1983 NJSBA

C. Use of School Buildings

The Association and its representatives shall have the right to use school buildings at all reasonable hours for meetings. The principal of the building in question shall be notified in advance of the time and place of all such meetings. No approval shall be required.

C. in its "no approval" section could substantially interfere with the educational and/or extracurricular program in the district. It would be wiser to retain prior approval.

D. Use of School Equipment

The Association shall have the right to use school facilities and equipment, including typewriters, mimeographing machines, other duplicating equipment, calculating machines, and all types of audio-visual equipment at reasonable times, when such equipment is not otherwise in use. The Association shall pay for the reasonable cost of all materials and supplies incident to such use, and for any repairs necessitated as a result thereof.

D. requires no advance approval. Is this acceptable to your administrators?

E. Bulletin Boards

The Association shall have, in each school building, the exclusive use of a bulletin board in each faculty lounge and teachers' dining room. The Association shall also be assigned adequate space on the bulletin board in the central office for Association notices. The location of the Association bulletin boards in each room shall be designated by the Association. Copies of all materials to be posted on such bulletin boards shall be given to the building principal, but no approval shall be required.

Some boards feel that it is inappropriate for the district to subsidize the union by providing district bulletin boards for union use, but consider it reasonable for the union to have exclusive use of those bulletin boards which it purchases and installs. Certainly the building principal should have the right to approve or disapprove those materials being posted on the central office bulletin boards.

F. Mail Facilities and Mail Boxes

The Association shall have the right to use the inter-school mail facilities and school mail boxes as it deems necessary and without the approval of building principals or other members of the administration.

F. The United States Postal Service has ruled that it is a violation of the federal postal statutes for a board to permit a union to use a district inter-building mail service. This decision is presently being challenged by the NEA and other parties in federal district court. A board which has such a clause, or is willing to agree to one, should insist that the union agree to language indemnifying the district against any costs it might incur, including an order for retroactive payment of postage, related to its compliance with this clause.

G. Office Space

The Association shall be provided without cost to it, with adequate office space in a building at a location and of a description to be mutually agreed upon. The Association shall be allowed to install a telephone in such office at its own expense.

H. Leave for Association President

The Board shall grant up to full leave with pay to the president of the Association during his term in office according to a schedule submitted by the president prior to the beginning of each school year.

G., H. Most districts will find it impossible to comply with these demands.

I. Released Time for Faculty Representative

The Board shall provide up to ( ) hours per week of released time to a faculty representative designated by the Association in each building to perform his functions as Association representative in the enforcement of this Agreement. Said time shall be in addition to regularly scheduled preparation time and lunch period as provided in this Agreement.

I. In larger districts, leave is granted in limited amounts. Your circumstance should dictate whether a similar clause is acceptable.

©1983 NJSBA

J. Orientation Programs

All orientation programs for new teachers shall be co-sponsored by the Board and the Association with the Association obligated to assume only such costs as may be mutually agreed upon during the planning of such programs. To the extent prohibited by law, the Board shall not be expected to assume the cost of purely social events conducted as part of such orientation programs, nor shall the Association be expected to assume the cost of speakers, consultants, and services normally considered an appropriate professional in-service training activity of a board of education. Duties and responsibilities of teachers involving student supervision outside of regular class work shall be clearly explained as part of the regular orientation program.

K. Sub Contracting

The Board shall enter into no contract which will result in instruction being provided, supervised, or otherwise influenced by any person or persons, organization, group or company other than properly certificated persons directly employed by the Board or by the Association without the express written approval of the Association.

L. Exclusive Rights

The rights and privileges of the Association and its representatives as set forth in this Agreement shall be granted only to the Association as the exclusive representative of the teachers, and to no other organizations.

Article VI, *Teacher Work Year*

A. In-School Work Year

1. Ten (10) month personnel

The in-school work year for teachers employed on a ten month basis (other than new personnel who may be required to attend an additional ( ) days of orientation) shall not exceed ( ) days. The first day of the in-school work day shall commence no earlier than September , 19 , and the last day shall be no later than June , 19 .

2. Twelve (12) month personnel

a. The in-school work year of teachers employed on a twelve (12) month basis shall not exceed ( ) days.

b. Teachers on a twelve (12) month basis shall be entitled to ( ) vacation days, which shall occur between July 1 and August 31.

3. Definition of in-school work year

The in-school work year shall include days when pupils are in attendance, orientation days, and any other days on which teacher attendance is required.

4. Inclement weather

Teacher attendance shall not be required whenever student attendance is not required due to inclement weather.

J. makes the union an equal partner with the board and administration in orientation programs. The advisability of this depends on your district's relationship with its teachers' union.

Subcontracting is an illegal topic of bargaining. **State of New Jersey,** 88 **N.J.** 393 (1982). A clause prohibiting subcontracting, or mandating negotiations prior to subcontracting, would be illegal and unenforceable. A board could, however, negotiate a clause providing for **discussions** with employee unions regarding a decision to subcontract, where the sole motivation for subcontracting is to save money. Procedural aspects of the decision to subcontract which affect terms and conditions of employment, such as reasonable notice of RIF due to the subcontracting, are negotiable.

The second sentence of A.1. attempts to establish the beginning and ending dates of the academic calendar. C.1. attempts to establish through negotiations the vacation breaks within the academic calendar. The **Burlington County College** Supreme Court decision, 64 **N.J.** 10 (1973), and recent PERC decisions hold that, while the actual number of days to be worked in a year is negotiable, the placement of those days is not.

Most boards have found that local unions have little desire to negotiate the calendar itself. Consultation with teachers is usually all that is needed, and is generally a good practice. But a clause requiring consultation **prior** to establishing or changing the calendar is not negotiable. **New Milford,** PERC No. 81-36.

©1983 NJSBA

B. Holidays

Teachers shall be entitled to the following holidays: (*denotes legal holiday)

- *Labor Day
- Rosh Hashanah
- *Columbus Day
- Yom Kippur
- *Election Day
- *Veterans' Day
- *Martin Luther King Day
- *Lincoln's Birthday
- *Washington's Birthday
- *Good Friday
- *Memorial Day
- *Independence Day
- *Christmas Day
- *New Years Day
- *Thanksgiving Day

Teachers have a statutory right to leave with pay on legal holidays. Most districts do not close school on these days, however, in order to provide Christmas and spring vacation periods and an early June dismissal; the great majority of teachers cooperate by attending school on these days when so scheduled.

C. Vacation Periods

1. Teachers shall be entitled to the following vacation periods each year of the contract:

November __________ -November __________
December __________ -January __________
April __________ -April __________
Other __________ - __________

2. The work day prior to a vacation period shall be a half day (not to exceed four (4) hours).

D. Voluntary Work

The Board and/or the Administration may request voluntary work. However, any voluntary work performed on or during a holiday or vacation period shall be compensated at double the daily rate as determined by a 180-day work year. A teacher shall have the right to refuse to perform volunteer work during a holiday or vacation period.

This is a typical trade union proposal. Double time has never been agreed to by a school board for its professional staff.

Article VII, *Work Hours and Work Load*

A. Work Day

1. Teachers shall not be required to "clock in or clock out" by hours and minutes. Teachers shall indicate their presence for duty by placing a check mark in the appropriate column of the faculty "sign-in" roster.

A.1. Boards may desire more proof of presence than a check mark on a roster.

2. The arrival and departure times for all teachers shall be designated in Schedule C; however, their total in-school work day shall consist of not more than ( ) hours and ( ) minutes which shall include a duty-free lunch period as guaranteed to teachers under Section C of this ARTICLE.

A.2. While the length of the school day is a required subject of negotiations, you must be very careful to avoid limiting district operation. Districts which negotiate **total** hours of the work day, rather than the **actual times** employee attendance is required, have substantially more flexibility to meet changing conditions.

3. Except as clarified in paragraph 4 below, no teacher shall be required to report for duty earlier than ( ) minutes before the opening of the pupil's school day, and shall be permitted to leave ( ) minutes after the close of the pupil's school day, except as otherwise designated in Schedule C. On Fridays or on days preceding holidays, the teachers' day shall end at the close of the pupils' day.

A.3. In order to protect flexibility in assignment, it would be wise for a board to avoid specifying the actual arrival and dismissal time for teaching personnel.

4. Any teacher who is required to work beyond the regular teacher in-school work year as defined in ARTICLE VI, Section A.1, or beyond his/her total in-school work day as defined in paragraph 2 and 3 above, shall be compensated at the rate prescribed in ARTICLE VI, Section F.

A.4. should be refused on the grounds that, as professionals, teachers should perform reasonable amounts of work beyond the normal work day. Under the clause, an argument can be made that grading and preparation must be additionally compensated for. At the least, this

©1983 NJSBA

B. Workload

1. Junior and Senior High School

a. The daily workload in the junior and senior high school shall be ( ) students per day which shall be equitably distributed through ( ) teaching periods per day and shall not exceed ( ) hours per day.

b. Junior and Senior High School teachers shall not be required to teach more than ( ) subject area(s), nor more than a total of ( ) teaching preparations.

c. Regular classroom teachers in the junior and senior high schools shall not be required to change subject area teaching stations more than ( ) time(s) during the school day.

d. Secondary teachers shall not be required to teach continuously for more than periods, nor ( ) where double periods are used.

2. Elementary School

a. The daily workload in the elementary school shall be ( ) students per day and shall not exceed ( ) hours per day.

b. Regular classroom teachers in the elementary school shall not be required to change teaching stations.

c. Elementary teachers shall not be required to teach continuously for more than ( ) hours.

d. Grade level workload shall be equalized.

3. Specialists

The workload of each specialist shall be equalized and shall be determined by the following number of students per specialist:

a. Elementary Level	Options-Per Day/ Per Period/Per Wk.
Art Teachers	__________
Vocal Music Teachers	__________
Foreign Language Teachers	__________
Physical Education Teachers	__________
Guidance Counselors	__________
Reading Specialists	__________
Nurses	__________
Instructional Media Specialists (Librarians)	__________
Other	__________

b. Secondary Level	Options-Per Day/ Per Period/Per Wk.
Guidance Counselors	__________
Reading Specialist	__________
Instructional Media Specialists (Librarians)	__________
Distributive Education	__________
Nurses	__________
Other	__________

c. Specialists shall not be required to teach continuously for more than ( ) hours.

4. Reduction of Workload Exceptions

Any class based on the maximum per teacher limits stated in paragraphs 1, 2, and 3 above shall be reduced when the number of pupils assigned to any room is larger than:

a. The capacity of teaching facilities, number of adequate teaching stations and number of adequate pupil stations available in the room,

b. The appropriateness of the room to content of the course, the methods

clause would mandate extra pay for attendance at faculty meetings and after-school parent conferences. "Section F" apparently refers to Section D, above.

B.1.a. and B.2.a. are, in part, class size clauses; class size is an illegal topic of bargaining since the **Ridgefield Park** decision. PERC has further held that the effect upon workload of an increase in class size is not negotiable because it is "inescapably intertwined and inseparable from" the decision to increase class size. **N.J.I.T.,** PERC No. 80-27. By contrast, PERC has generally held that the number of assigned teaching periods and duty periods per day involves "work hours" and is a required topic for negotiations. **Buena Reg.,** PERC No. 79-63.

B.1.b., c., d., and B.2.b, c., and d. are illegal topics for negotiations. Teacher assignments are a central aspect of a district's educational program. Such clauses are rare in teachers' agreements.

B.3. is the equivalent of a class size clause and is probably illegal.

B.4. is a class size provision and is illegal.

of instruction to be employed, and the prior preparation of teachers therefore,

c. The availability of equipment for adequate teacher demonstration and student use,

d. Any other conditions which affect the health, safety, and supervision of the pupils.

5. Overload

a. Where overload is necessary, teachers shall receive additional salary which shall be calculated by dividing the teacher's salary by the maximum class and multiplying by the number of overload students.

b. Any overload in excess of five (5) students shall be double the normal overload formula as determined above.

c. The determination of the actual workload shall be made on the third day of pupil attendance. Any overload shall be calculated and added to a teacher's salary immediately. Any additional overload thereafter shall be added to salary as of the date of the overload.

6. Lunch Periods

a. Grade Level and Other

Teachers shall have a daily duty-free lunch period of at least the following lengths:

1. Elementary School— __________
2. Junior High School— __________
3. Senior High School— __________
4. Other — __________

b. Leaving the Building

Teachers may leave the building without requesting permission during their scheduled duty-free lunch periods.

7. Preparation Time

a. Grade Level

Classroom teachers shall, in addition to their lunch period, have daily preparation time during which they shall not be assigned to any other duties as follows:

1. Elementary School— __________
2. Junior High School— __________
3. Senior High School— __________
4. Other members of the negotiating unit who are not regular classroom teachers shall be provided with preparation time to the same extent as other teachers.

b. Extra Pay and/or Released Time

1. It is desirable for each teacher to have an uninterrupted preparation period each day. The practice of using a regular teacher as a substitute, thereby depriving him/her of his/her preparation period, is undesirable and shall be discouraged. In those cases where regular substitutes are not available, regular teachers who volunteer may be used as substitutes during their non-teaching time. In the absence of volunteers, a teacher may be assigned to serve as substitute. Volunteers and assigned teachers shall be paid at the rate of 1/1000 of their annual contract salary per class covered or the teacher may choose to credit these periods up to a total of ( ) periods which shall entitle him to ( ) additional personal business day(s) to be taken before the end of the current school year. Such coverage shall be arranged by the principal of the school in question and shall be distributed as equitably as possible among the teachers in said school.

2. In those cases where regular substitutes are not available and two classes are to be combined for the day or a major part thereof, the teacher in charge shall be paid 1/200 of his annual contract salary in addition to his regular salary; if the class is divided between two or more other teachers, each teacher teaching any part of the split class shall receive 1/400 of his/her annual salary in addition to his/her regular salary.

B.5. It is likely that PERC will find a clause such as this, which does not prohibit increases in class size but provides premium pay for teaching in such a class, to be legal. Few boards have agreed to such clauses.

B.6.b. Some boards may desire to require notice of a teacher leaving.

B.7.a. must be considered in light of the specific requirements and duties of each classification in the unit. Note that 7.a.4. would grant preparation time to nurses, librarians, and part-time employees covered by this contract. It may be unreasonable to provide these people with preparation time in light of their duties.

The second sentence of 7.b. is an illegal topic for negotiations, because it concerns the hiring process. **Elizabeth**, PERC No. 80-10. The rest of the clause is legal. Very few boards have agreed to pay extra money to teachers who must teach combined classes because of a lack of substitutes.

©1983 NJSBA

c. Exceptions

Exceptions to the provisions of Sections a and b above, may be made only in cases of extreme emergency. The Association shall be notified in each such instance, in advance, if possible.

B.7.c. It is likely that any arbitration award involving this clause that prohibited an employer from acting in an emergency according to the employer's definition of "emergency" would be illegal.

d. Extra-curricular Activities

1. Approved Activites

The board and the Association agree that the extra-curricular activities listed in Schedule E.

This clause should conclude ". . .are educationally worthwhile." It should be rejected as illegal, and because it opens the door for an arbitrator to forbid the termination of an extra-curriculuar activity.

2. Salary

Teacher participation in extra-curricular activities which extend beyond the regularly scheduled in-school day shall be voluntary, and shall be compensated according to the rate of pay and/or released time in Schedule E.

3. Staggered Schedule

In cases where released time is stipulated for extra-curricular assignments, such time shall be scheduled as a block at the beginning or end of the in-school day and attendance of the teacher at school shall not be required during said time.

The decision to assign particular teachers to extracurricular positions, and the workload increase that necessarily accompanies that decision, is not negotiable. **Ramapo-Indian Hills,** PERC No. 80-9. While it is obviously preferable to have voluntary coverage of these activities, circumstances may not allow it for all activities.

e. Field Trips

Field trips shall be scheduled and implemented in a manner which shall be mutually agreed upon by teachers participating in them. Written permission for field trips shall be obtained from the superintendent to guarantee insurance coverage as a school-sponsored activity. For participation in field trips which extend beyond the teachers' in-school workday, and overnight or weekend trips, teachers shall be compensated at the rate set forth in Section A, paragraph 4 of this ARTICLE.

B.7.e. The first sentence concerns an illegal topic for negotiations. See the commentary above.

8. Meetings

a. Teachers may be required to remain after the end of the regular workday, without additional compensation, for the purpose of attending faculty or other professional meetings ( ) day(s) each month. Such meetings shall begin no later than ( ) minutes after the student dismissal time and shall run for no more than ( ) minutes. Except in cases of an emergency involving the health and safety of students and teachers, if additional time is needed, students shall be dismissed early.

b. Meetings which take place after the regular in-school workday and which require attendance shall not be called on Fridays or on any day immediately preceding any holiday, or other day upon which teacher attendance is not required at school.

B.8.a., b. and e. limit the district's ability to schedule after-school meetings for faculty. Before agreeing to such a clause, the board must be sure that the administration finds it practical. The clause should be limited to faculty meetings so as not to limit the board's right to schedule parent-teacher meetings or to assign teachers to special assignments and programs presented by the students.

c. An association representative may speak to the teachers during any meeting referred to in paragraph 1 above for at least ( ) minutes on the request of the representative.

d. The notice of and agenda for any meeting shall be given to the teachers involved at least ( ) days prior to the meeting, except in an emergency. Teachers shall have the opportunity to suggest items for the agenda.

e. Teachers may be required to attend no more than ( ) evening assignments or meetings each school year without additional compensation.

B.8.c. It is legally questionable, and impractical, for the union to have a right to speak at all meetings which teachers are required to attend.

©1983 NJSBA

C. Department Heads

Department heads shall not be assigned more than ( ) student instruction-supervision periods each day, and shall be excused from regular study hall duties and homeroom assignments. A student instruction-supervision period means any period during which a teacher is responsible for directing the learning or supervising the behavior of students.

C. Department heads who are truly supervisors within the meaning of the PERC law should not be included in the teachers' bargaining unit. See **PERC,** pp. 8-10.

D. Instructional Planning

Every teacher shall plan and teach course content in the manner he considers most practical and useful. Teachers who have received satisfactory evaluations shall not be required to submit standardized daily or weekly lesson plans which involve a mandated procedure or form. Teachers shall provide substitutes with daily, weekly, and/or alternate plans as needed, according to procedures developed by the principal and the Liaison Committee in each building as hereafter established under ARTICLE XXII of this Agreement.

E. A teaching period shall be defined as any pupil contact situation.

D. The first and second sentences are illegal, and agreement to them would severely limit an administrator's ability to monitor the achievement of educational goals in a building and to evaluate the performance of staff. **Fairview,** PERC No. 81-19. The obligation to develop procedures for providing lessons for substitutes in consultation with the Liaison Committee is legal only as long as it doesn't interfere in the principal's access to the lesson plans or his ability to provide them to substitutes. (The Liaison Committee article is actually Article XVIII.)

F. Any violations of the above procedures which cause inconvenience, additional workload or impact on working conditions shall be remedied immediately.

F. The ambiguity of this clause is enough to warrant its rejection. The reference to "additional workload" may be illegal as it relates to increases in class size.

Article VIII, *Nonteaching Duties*

A. Intent

The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should, to the extent possible, be utilized to this end. Therefore, they agree as follows:

Paragraph A. of Article VIII is a goal statement and should not be agreed to.

B. Application

1. **List of nonteaching duties**

Option (a)

Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties:

1. Nonprofessional assignments, including but not limited to milk distribution and supervision of cafeterias, sidewalks, bus loading or unloading or playgrounds.
2. Collecting money from students.
3. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
4. Correcting standardized tests used at the direction of the Board or the Administration.

Option (b)

1. Teachers may volunteer to perform the following nonteaching duties at the rate of $ per period.
   - a. Cafeteria duty
   - b. Supervision of playgrounds
   - c. Supervision of bus loading
   - d. Supervision of bus unloading
   - e. Milk distribution

PERC and the courts have been ambiguous on whether the decision to assign non-teaching duties to teachers is negotiable. If a clause is written in terms of workload, it will usually be considered binding; e.g., ". . .no more than five assigned periods per day." If it is written as a blanket prohibition on the assignment of teachers to non-teaching duties, it will be non-negotiable. It is lawful, on the other hand, to agree to extra pay for such duties. Very few boards have done so, however, because it is illogical to pay extra money to someone to do work which he is presently doing as part of the traditional responsibilities of the position.

The interested reader seeking more information on the dichotomy between

Nonteaching Duties

2. Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties.
   a. Collecting money from students.
   b. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
   c. Correcting standardized tests used at the direction of the Board or the Administration.

the negotiability of increased workload and the non-negotiability of non-teaching assignments is directed to **Plainfield,** PERC No. 80-42; **Bayonne,** App. Div., Nov. 3, 1980 (unpublished); **Dover,** App. Div., March 16, 1982 (unpublished); **Perth Amboy,** PERC No. 83-36; **Mahwah,** PERC No. 83-96; and **Hope,** PERC No. 83-126.

2. Secretarial assistance

By the beginning of the 19 - school year, the Board shall hire one (1) secretary for every ( ) teachers to assist teachers in the preparation of materials, correspondence, ordering supplies and other duties related exclusively to teachers.

The decision to hire secretaries, or any other personnel, is not negotiable.

3. Noneducational activities

Activities which have no educational objective shall be barred from the classroom. There shall be no collection of funds from students for:

a. Activities in which all pupils are expected to participate which should be legitimately financed by the Board.
b. Other activities of such a desirable educational nature that they should be legitimately financed by the Board.
c. Activities and charitable purposes not appropriate or directly related to the age and interests of the pupils.
d. Activities and charitable purposes beyond the ability to pay of the least able pupil in the classroom.

4. Transporting students

a. Teachers shall not be required to drive students. A teacher may do so voluntarily, however, with the advance approval of his principal or immediate supervisor. He shall be compensated at the rate of (c) cents per mile for the use of his own automobile.

b. By the beginning of the 19 - school year, the Board shall cover all damages, losses, and expenses incurred by a teacher arising out of the authorized use of his automobile in the performance of school duties.

The decision as to whether funds will be collected from students, and what those funds will be used for, is not a legal topic for negotiations. Some of the restrictions in this clause may be sound educational/administrative policy, and may already be the practice in your district; they are not, however, suitable topics for labor contracts. Few, if any, boards have agreed to such a clause.

Article IX, *Teacher Employment*

A. Certification

1. Standard certificates

The Board agrees to hire fully certificated teachers holding standard certificates issued by the New Jersey State Board of Examiners for every teaching assignment.

Article IX brings the union into the hiring process. This area is considered, for good reason, a basic management prerogative.

In **Ridgefield Park,** the Court relied heavily on C.212, the T & E law, which very specifically lists hiring as a policymaking function to be carried out with a "maximum of citizen participation." As such, agreements which limit boards in setting criteria for hiring (within the framework of existing law) are illegal.

2. Notification

Upon employment the superintendent shall report to the Association in writing the certificates and degrees held, major and minor fields of study, and prior experience of each new teacher.

There is no valid reason why the superintendent should be required to "report" to the association the information demanded in paragraph A., clause 2 except as it is needed to ascertain whether the employee was placed on the proper salary level.

B. No Reduction

The Board agrees there shall be no reduction in the number of teachers from the previous year in positions defined in the unit represented by the Association as heretofore specified in ARTICLE I, Section A, of this Agreement for the duration of the Agreement.

(Notice to Association Leaders: If reduction in force is a threat in your district, the UniServ office will supply sample language for your contract.)

C. Non-Certificated Personnel

The duties of non-certificated personnel shall be confined solely and exclusively to such duties as would assist certificated professional personnel in the performance of their respective duties. In no case shall any non-certificated employee be requested or required to perform any duty previously performed by a duly certificated professional employee.

D. Placement on Salary Schedule

1. Adjustment to salary schedule

Each teacher shall be placed on his proper step of the salary schedule as of the beginning of the 19 - school year in accordance with paragraph 2 below. Any teacher employed prior to February 1 of any school year shall be given full credit for one (1) year of service toward the next increment step for the following year.

2. Credit for experience

Credit up to the ( ) step of any salary level on the Teacher Salary Schedule shall be given for previous outside teaching experience in a duly accredited school upon initial employment in accordance with the provisions of Schedule A. Additional credit not to exceed ( ) years for military experience or alternative civilian service required by the Selective Service System and credit not to exceed ( ) years for Peace Corps, VISTA or National Teacher Corps work and time spent on a Fulbright Scholarship shall be given upon initial employment. As of the beginning of the 19 - school year, the aforementioned credit shall be given to any presently employed teacher who has not heretofore received it.

E. Returning to the District

A teacher with previous teaching experience in the School District shall upon returning to the system receive full credit on the salary schedule for all outside teaching experience, military experience or alternative civilian service required by the Selective Service System, Peace Corps, VISTA or National Teacher Training Corps work and time spent on a Fulbright Scholarship up to the maximum set forth in Section B above. Such teachers who have not been engaged in other teaching or the other activities indicated above shall, upon returning to the system, be restored to the next position on the salary schedule above that at which they left.

B. This is an illegal subject of negotiations.

C. The assignment of personnel, as long as it is carried out consistent with existing law, is major educational policy and, therefore, an illegal subject. The second sentence appears to refer to using employees outside of the bargaining unit (see Chapter 2, "Representation," in **PERC**) to do work normally assigned to members of the unit. This is a required topic for negotiations. **Rutgers,** PERC No. 82-20, affirmed, App. Div., May 18, 1983 (unpublished).

Paragraphs D.2. and E. should be rejected or modified, because they restrict your discretion in two serious ways. First, they **mandate** that you give credit on the salary schedule for certain types of experience. You may know that an applicant is very willing to work at a lesser salary, or that the prior experience is irrelevant to the position he or she is entering. For these reasons, a mandate to grant credit for the types of experience noted in D.2. and E. may force a board to expend money unnecessarily or unwisely, or lead it to reject a candidate because that person's "entitlement" under this clause would be much greater than other candidates.

Second, these clauses **limit** your ability to offer an employee a **higher** starting salary than is provided by this clause. Such a limitation puts a district at a disadvantage in relation to another district without such a clause. It also severely restricts your ability to compete with the private sector for certain types of staff, particularly math and science teachers.

For these reasons, a board should insist on complete discretion in the initial placement of personnel on the salary schedule. The following language is recommended:

In accordance with N.J.S.A.

F. Previous Sick Leave Accumulation

Previously accumulated unused leave days shall be restored to all returning teachers.

G. Notification of Contract and Salary

Teachers shall be notified of their contract and salary status for the ensuing year no later than____________.

Article X, *Salaries*

A. Salary Schedule

The salary of each teacher covered by this Agreement is set forth in Schedule "A" which is attached hereto and made a part hereof.

B. Procedure for Withholding Increment

Regular salary guide increments excluding adjustment may be withheld in whole or in part for inefficiency or other just cause related to the performance of duties and only in accordance with the following:

1. Subject to ARTICLE IV, Section C.
2. That the procedures be adhered to as outlined in ARTICLE XVIII, "Teacher Evaluation."
3. The immediate superior and/or the principal shall not forward any recommendation to withhold a teacher's increment or a part thereof through the superintendent to the Board unless at least (90) ninety calendar days prior thereto, and in no case later than April 1 of the preceding school year in which such action would take effect, the principal has given to the teacher against whom the recommendations shall be made, written notice of the alleged cause(s) for the recommendations specifying the nature thereof with such particulars as to furnish the teacher an opportunity to correct and overcome the same.
4. Once a recommendation is forwarded to the teacher and the Board, the teacher may within ten (10) school days file a grievance commencing at the Superintendent level. No action shall be taken on the recommendation until the grievance is heard according to the grievance procedure as set forth heretofore in ARTICLE III of this Agreement.
5. Any action by the Board to withhold an increment or any part thereof shall be subject to appeal to arbitration as set forth in ARTICLE III of this Agreement. The arbitrator shall have the authority to restore all or part of the increment withheld retroactively.
6. Salary guide increment or part thereof withheld under this provision shall be restored the following year unless the procedures set forth in this provision are followed once again, in which case the increment or increments previously withheld and any additional increments which may be due may be withheld in whole or in part.

C. Method of Payment

1. Twelve (12) month

Each member employed on a twelve (12) month basis shall have the option of being paid in twenty-four semi-monthly installments or in twelve (12) monthly installments.

18A:29-9, whenever a person shall accept employment as a teacher in this school district, his initial placement on the salary schedule shall be at such point as may be agreed upon by the individual and the board of education.

Note, however, that **N.J.S.A.** 18A:29-11 requires a board to give credit on the salary schedule for military service, to a maximum of four years.

Paragraph F.: There is no statutory compulsion that boards grant such a provision.

Agreement on any dates for contract notification should be made only after careful consultation with the superintendent. Early notification dates have caused difficulties in many districts.

Paragraph B. of this article restricts the board's authority to withhold a teacher's salary increment. In **Bernards Township,** the Supreme Court held such a restriction to be illegal (see "The Scope of Negotiations," earlier). The only aspects of withholding of an increment that may be negotiated are procedural matters that are consistent with **N.J.S.A.** 18A:29-14, such as notice to the teacher of the intent to withhold the increment, and the right to grieve the board's decision to **advisory arbitration.** (The article on teacher evaluation is actually ARTICLE XIV.)

Agreements with respect to methods of payment must meet your own administrative needs and be consistent with legal requirements.

©1983 NJSBA

2. Ten (10) month

Each teacher employed on a ten (10) month basis shall have the option of being paid in twenty (20) equal semi-monthly installments, or ten (10) equal monthly installments.

3. Summer pay plan

Each teacher may individually elect to have ten (10%) percent of his monthly salary deducted from his pay. These funds shall be paid to the teacher or his estate on the final pay day in June, according to a schedule of payment throughout the summer as requested by the teacher, or upon death or termination of employment, if earlier.

4. Exceptions

When a pay day falls on or during a school holiday, vacation or week-end, teachers shall receive their pay checks on the last previous working day.

5. Final pay

Each teacher shall receive his final pay and the pay schedule for the following year on his last working day in June.

Article XI, *Teacher Work Stations*

A. Procedure

1. All teachers shall be given written notice of their salary schedules, class and/or subject stations, building and room stations for the forthcoming year not later than   . A list of said schedules and stations shall be simultaneously sent to the Association.

2. The superintendent shall notify all newly-appointed personnel of their specific positions within that subject area and/or grade level for which the Board has appointed them. The Superintendent shall give notice of work stations to new teachers as soon as practicable, and except in cases of emergency, not later than

3. In the event that changes in such schedules, class and/or subject, building or room stations are proposed after   , the Association and any teacher affected shall be notified promptly in writing and, upon the request of the teacher and the Association, the changes shall be promptly reviewed between the superintendent or his representative and the teacher affected and at his option a representative of the Association.

Notice provisions related to teacher assignment are required subjects for negotiations. Any aspect of this article, however, which infringes on the right of boards to make education-related decisions regarding assignments is illegal. Most of this article was subject to PERC analysis in **Fairview Board of Education**, PERC No. 80-18.

Paragraph A.1., 2., and 3. concern required topics for negotiations, because they are strictly procedural in nature. The dates on which notice can reasonably be given is a judgment for your district's administrators making these assignments.

B. Teachers shall only be assigned to teach in areas for which they hold a standard teaching certificate issued by the New Jersey State Board of Examiners.

This is an illegal topic because it concerns the criteria for assignment.

C. 1. Schedules of teachers who travel to more than one school shall be arranged so that no such teacher shall be required to engage in an unreasonable amount of inter-school travel. Such teachers shall be notified of any changes in their schedules as soon as practicable.

2. Teachers who may be required to use their own automobiles in the performance of their duties and/or teachers who are assigned to more than one (1) school per day shall be reimbursed for all such travel at the rate of   ( ) cents per mile for all driving done between arrival at the first location at the beginning of their workday, provided, however, that if the distance from the teacher's home to his first location or from the teacher's last location to his home is greater than the distance between the teacher's home and his base school, he shall be reimbursed for the difference at the rate of   ( ) cents per mile.

C.1. The first sentence of this clause is illegal because it imposes a limitation upon the board's ability to make up teacher schedules. The second sentence is procedural and negotiable.

D. Procedure for Change in Teacher Work Stations

1. The superintendent shall deliver to the Association and post in all school buildings a list of the known vacancies as they occur.

2. Teachers who desire a change in grade and/or subject station or who desire to change to another building may file a written statement of such desire with the superintendent. Such statement shall include the grade and/or subject to which the teacher desires to be placed and the school or schools to which he/she desires to be placed, in order of preference. Such requests for change in the work station for the following year shall be submitted no later than

3. As soon as practicable, and no later than   , the superintendent shall post in each school and deliver to the Association a system-wide schedule showing the names of all teachers whose work station has been changed, including the nature of the change.

D.1.,2.,3., and 6. are procedural and negotiable. If agreed to, be certain any dates included are administratively feasible.

©1983 NJSBA

4. In the determination of requests for a change in work station, the wishes of the individual teacher shall be honored to the extent that the change does not conflict with the instructional requirements and best interests of the school system. No such request shall be denied arbitrarily, capriciously, or without basis in fact. If a teacher's request for change has been denied, a renewed or subsequent request made in the following school year shall be granted under the conditions described above, unless there is no available position or an adequate replacement for the teacher cannot be obtained. If more than one teacher has applied for the same position, the determination as to which teacher shall receive it shall be made by lottery.

5. No vacancy shall be filled by means of involuntary change in work station if there is a qualified volunteer available to fill said position.

6. Notice of a voluntary change in work station will be given to teachers as soon as practicable, and except in cases of emergency not later than ________.

7. When an involuntary change in work station is necessary, a teacher's area of competence, major or minor field of study, length of service in the   School District, length of service in the particular school building, and other relevant factors including, among other things, state and/or federal laws, rules, regulations or administrative directives, shall be considered in determining which teacher is to be selected for a change in work station.

8. An involuntary change in work station shall be made only after a meeting between the teacher involved and the [insert appropriate title], at which time the teacher shall be notified of the reason therefor. In the event that a teacher objects to the change at this meeting, upon the request of the teacher, the superintendent shall meet with him. The teacher may, at his option, have Association representative(s) present at such meeting.

9. A list of open positions in the school district shall be made available to all teachers being involuntarily changed. Such teachers may request the work stations in order of preference, to which they desire to be changed. All such teachers shall be given adequate time off for the purpose of visiting schools at which open positions exist. Teachers being involuntarily changed from their present positions shall have preference over those seeking voluntary change in regard to choice among those positions which are vacant. A teacher being involuntarily changed shall be placed only in an equivalent position—i.e., one which among other things does not involve reduction in rank or in total compensation.

D.4. and 5. are illegal because they concern the criteria for selection and assignment of personnel.

D.7. also concerns criteria for assignment and is illegal.

D.8. According to PERC, the right to a meeting to discuss a transfer prior to the scheduled date of the transfer is a procedural matter and is negotiable. However, "the existence of such a procedure cannot prohibit effectuation of an assignment until after such a meeting takes place." Failure to comply with a prior meeting clause may not authorize rescission of an assignment. **East Orange,** PERC No. 81-25. In other words, the clause is negotiable, but apparently unenforceable. Such clauses don't help either party. A better approach would be to place such a clause into administrative regulation and to exclude it from arbitration.

D.9. The first two sentences in this paragraph are procedural and negotiable, and may be acceptable to most boards. The third sentence is likewise negotiable, but may cause too many administrative problems regarding the length and scheduling of such visits to be acceptable in your district.

The fourth sentence gives preference to involuntarily transferred teachers in filling vacancies. Such preference is illegal because it interferes in the assignment of personnel by management.

The last sentence is legal in some aspects, but at least potentially illegal in others. It is legal to the extent that it concerns matters that are themselves negotiable, e.g. protection against decreased compensation. It would be illegal if it were interpreted to concern

©1983 NJSBA

10. Any teacher whose work station is changed shall be provided assistance in the following manner:

a. In cases of changes of work station during the work year, the teacher shall be provided one work week free of pupil contact in order to prepare for the new work station.

b. In cases of changes in work station determined during the summer vacation period, or changes scheduled during the work year effective for the next work year, the teacher shall have the option to work any one week during the summer vacation period. The teacher shall be compensated at the rate of pay appropriate to the new work year.

c. In the event a teacher takes courses related to the change in work station, the board shall pay the full cost of tuition and all related personal expenses.

Article XII, *Promotions*

A. Positions Included

Promotional positions are defined as follows:
Positions paying a salary differential and/or positions on the administrator-supervisory levels of responsibility including but not limited to positions as (list by title)
All vacancies in promotional positions, including specialists and/or special projects teachers, pupil personnel workers and positions funded by the federal government shall be adequately publicized by the superintendent in accordance with the following procedure:

1. Date of posting

When school is in session, a notice shall be posted in each school as far in advance as practicable, ordinarily at least thirty (30) school days before the final date when applications must be submitted and in no event less than fifteen (15) school days before such date. A copy of said notice shall be given to the Association at the time of posting. Teachers who desire to apply for such vacancies shall submit their applications in writing to the superintendent within the time limit specified in the notice, and the superintendent shall acknowledge promptly in writing the receipt of all such applications. Applications shall be kept on file in the superintendent's office for continual consideration for future vacancies until the office is notified in writing by an applicant that the application is withdrawn.

2. Application procedure

Teachers who desire to apply for a promotional position which may be filled during the summer period when school is not regularly in session shall submit their names to the superintendent, together with the position(s) for which they desire to apply, and an address where they can be reached during the summer. The superintendent shall notify such teachers of any vacancy in a position for which they desire to apply. Such notice shall be sent as far in advance as practicable, ordinarily at least twenty-one (21) days before the final date when applications must be submitted and in no event less than fourteen (14) days before such date. In addition, the superintendent shall, within the same time period, post a list of promotional positions to be filled during the summer period at the administration office, in each school, and a copy of said notice shall be given to the Association.

B. Criteria for Notice

In both situations set forth in Section A above, the qualifications for the position, its duties, and the rate of compensation, shall be clearly set forth. The qualifications set forth for a particular position shall not be changed when such future vacancies occur unless the Association has been notified in advance of such changes and the reason therefor. A disagreement over the necessity for such changes shall be subject to the grievance procedures set forth in this Agreement. No vacancy in a promotional position shall be filled other than in accordance with the above procedure.

C. Two Optional Plans (Select One)

Option (a)

All qualified teachers shall be given adequate opportunity to make application and

non-negotiable matters; "equivalent position" cannot refer to class size, teaching assignment, or other such items.

D.10 has not been considered by PERC. It appears to be negotiable, relating only to paid leaves, extra compensation, and tuition reimbursement. 10a. and b., however, will be found by most boards to be unnecessary and therefore unacceptable.

If the board agrees to a notification procedure for promotions, the time limits agreed upon must be feasible.

The proposed definition of promotion should include reference not only to increased salary or salary differential, but should also make clear that extra work and/or extra pay assignments should not constitute promotions.

There appears to be no good reason to require the superintendent to acknowledge a request for a promotion; if, however, such acknowledgement must be made, it should be nothing more than a simple form reply.

The superintendent should not be required to maintain a continuous file nor be required to constantly review old applications until such applications are withdrawn. A new application should be required for each vacancy.

It should be stated definitely and clearly that it is the function of the superintendent to determine the qualifications required for any promotion.

B. The third sentence is an illegal subject for negotiations, because it would interfere in the board's right to determine the qualifications for promotion. **Newark,** PERC No. 80-2.

C. In Option (a) the first sentence and sentences four through seven are procedural issues normally held by

©1983 NJSBA

no position shall be filled until all properly submitted applications have been considered. The Board agrees to give due consideration to the professional background and attainments of all applicants, and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor. Each teacher applicant not selected shall, upon request, receive a written explanation from the superintendent. Appointments shall be posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building. The list shall be given to the Association and shall indicate which positions have been filled and by whom.

Option (b)

1. All qualified teachers shall be given adequate opportunity to make application for such positions and no positions shall be filled until all properly submitted applications have been considered. The Board agrees to give due weight to the professional background and attainments of all applicants and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor.

2. All promotional positions shall be filled according to the following procedures:

a. Each applicant who meets the qualifications for a vacancy shall be interviewed by a committee of ( ) persons, ( ) appointed by the superintendent and ( ) appointed by the president of the Association, and a record of the interview shall be filed with the application. Interview ratings for each applicant shall be prepared independently by each member of the committee.

b. The committee shall then combine the independent interview ratings, together with the applicant's formal training, professional experience and experience in the School District into a total rating.

c. All applicants shall be placed on a ranked list according to their total ratings.

d. Selection for a vacancy shall be made from among the three (3) top ranking applicants by the superintendent with the approval of the interviewing committee.

3. Appointments shall be made not later than sixty (60) days after the notice is posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building, and a list shall be given to the Association indicating which positions have been filled and by whom.

Article XIII, *Accredited Evening High School—Summer School—Home Teaching and Federal Programs*

A. Posting

All openings for positions in the accredited evening high school, summer school, home teaching, federal projects, and other programs (including non-teaching positions for which teachers may be qualified and eligible) shall be publicized by the superintendent in accordance with the procedure for publicizing promotional vacancies set forth in ARTICLE XVI, Sections A and B of this Agreement. Summer school and accredited evening high school openings shall be publicized not later than the preceding March 1 and June 1 respectively and teachers shall be notified of the action taken not later than May 1 and September 1, respectively. Home teaching openings shall be posted as they occur.

B. Criteria

In filling such positions, consideration shall be given to a teacher's area of competence, major and/or minor field of study, quality of teaching performance, attendance record, and length of service in the School District. When

PERC to be required topics.

The second and third sentences go to the criteria for promotion and are thus illegal topics.

In Option (b), only the first sentence of the first paragraph and the last sentence of the last paragraph are procedural and negotiable. The rest of this article deals with the criteria for promotion and seriously restricts a board's discretion in this area.

For a detailed analysis by PERC on a similar clause, see **Newark,** PERC No. 80-2.

The first question concerning this article is: are evening high school and summer school program personnel included in your bargaining unit? If they are not, there should be no negotiations over the terms and conditions of employment for those positions.

Even if certain positions are not included in the bargaining unit, requirements for notification of position openings is a required subject (no concessions must be made in this area). The dates contained in A. may be too early in some districts.

B. The criteria for selection of employees is not negotiable.

©1983 NJSBA

all other factors are substantially equal, preference shall be given first to teachers who have taught the subject area and/or grade level in question during the regular school year and then to teachers who have taught the grade and/or subject in question on a regular basis at any time during the preceding   (   ) years. Teachers employed in the   School District shall have priority to such assignments before appointment to applicants from outside the district.

C. Salary

Salary schedules for positions included in this ARTICLE shall be negotiated under procedures outlined in ARTICLE II of this Agreement along with regular salary schedules wherever possible, or at such other times as may be appropriate in order to conform to the time requirements for the implementation of said programs.

D. Coverage by Master Agreement

All of the provisions of this Agreement shall apply to teachers holding positions in the accredited evening high school, summer school, home teaching and/or under federal programs, except where clearly inapplicable.

Article XIV, *Teacher Evaluation*

A. Evaluation Committee

1. Membership

No later than September 15, 19   , the Board and the Association agree to establish an Evaluation Committee consisting of   (   ) members,   (   ) members appointed by the Board, and   (   ) members appointed by the Association.

2. Responsibility

This Committee shall develop specific criteria for the evaluation of teachers.

3. Report Date

The recommendations shall be submitted for adoption to the Board and the

Again, C. and D. relate to terms and conditions of employment, but should not be a subject of negotiations unless these positions are included in the bargaining unit.

Two major decisions by PERC provide considerable guidance on the legality of the Sample Agreement language. These cases should be carefully reviewed before negotiating on this topic. **Bethlehem Board of Education,** PERC No. 80-5, and **Fairview Board of Education,** PERC No. 80-18.

Because of the State Board's rules on tenured teacher evaluation, there is a different range of negotiable items for tenured teachers as compared to non-tenured teachers. In either case, all educational policy matters, such as the criteria for evaluation and the selection of the evaluator, are non-negotiable. For tenured teachers there are substantial limits on the kinds of evaluation procedures that can be negotiated, because districts must conform to the extensive State Board regulations. The legal requirements for the evaluation of non-tenured teachers are less comprehensive, so there is more room for negotiations in this area.

Equally important to knowing the law on this topic is to know what is practical and effective in teacher evaluation. The opinions of your administrative staff are invaluable here.

Because the criteria for evaluation is an illegal subject, the creation of an employee committee that has anything more than advisory authority is non-negotiable. The committee should not be able to obstruct the board's ability to adopt or change evaluation criteria. While the board should encourage wide professional involvement in

Association no later than December 15, 19

B. Procedure

1. Frequency

a. Teachers shall be observed through classroom visitation by a certified supervisor at least ( ) times in each school year, to be followed in each instance by a written evaluation report and by a conference between the teacher and his immediate supervisor for the purpose of identifying any deficiencies, extending assistance for their correction and improving instructions. Each observation shall consist of at least a full period in the junior/senior high school or a complete lesson in the elementary school(s).

b. Teachers shall be informed of classroom visitation at least five (5) work days in advance of said visitation.

c. Classroom visitations/observation shall not occur on the same day, nor shall any observation occur prior to the previous evaluation conference. In no case should any observation occur within ten (10) school days of the previous evaluation. All visitations/observations shall occur in the same work year.

2. Non-tenured Review

Violations of or disagreements over any of the provisions of this ARTICLE in cases involving nonrenewal of contract or termination of employment of nontenure teachers shall be subject to review under the Fair Dismissal Procedure established in ARTICLE XIX of this Agreement and shall be considered grounds for reinstatement without loss of pay or any other benefit provided by this Agreement.

3. Open Evaluation

All monitoring or observation of the work performance of a teacher shall be conducted openly and with full knowledge of the teacher. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.

4. Evaluation by Certificated Supervisors

a. Teachers shall be evaluated only by persons certificated by the New Jersey State Board of Examiners to supervise instruction. By September 1 of each school year, each teacher shall be given the name of the person who will evaluate his/her classroom performance.

b. Evaluators shall be regular full-time employees of the school district and shall be certified in the instructional areas they are evaluating.

5. Copies of Evaluation

A teacher shall be given a copy of any class visit evaluation report prepared by his/her evaluator at least one (1) day before any conference to discuss it. No such report shall be submitted to the central office, placed in the teacher's file or

evaluation criteria development, that involvement may not exclude the public or individual teachers from having input.

B.1.a. is procedural and negotiable. The minimum duration of an observation for a non-tenured teacher is set out in **N.J.A.C.** 6:3-1.19.

PERC has held advance notice of evaluations to directly affect the substantive aspects of the evaluation process and therefore to be illegal topics for negotiations.

B.1.c. This is procedural and negotiable.

B.2. PERC has ruled, in keeping with various court decisions, that the decision to renew or not renew a non-tenured teacher is a non-negotiable management right. Hence this clause is illegal. (The Fair Dismissal Procedure is actually found at ARTICLE XV of the Sample Agreement.)

B.3. is negotiable.

B.4.a. The first sentence limits the board in selecting its evaluators, and is illegal. The second sentence, providing that teachers be notified of their evaluator's name, is procedural and negotiable. B.4.b. is illegal because it restricts the board's right to hire and assign employees.

B.5. The first and third sentences are legally negotiable. The second sentence is negotiable for non-tenured teachers, and mandated for tenured

©1983 NJSBA

otherwise acted upon without prior conference with the teacher. No teacher shall be required to sign a blank or incomplete evaluation form.

6. Conferences

Evaluation conferences as described in Section B.1 shall occur within fifteen (15) days of the observation. The conference shall be held within the school day without loss of benefit to the teacher.

7. Right to Representation

A teacher shall have the right to representation in an evaluation conference.

8. Standardized Tests

Results of standardized tests used for evaluating students shall not be used to evaluate teacher performance.

9. Communication

Prior to any evaluation report the immediate supervisor of a teacher shall have had appropriate communication, including but not limited to all steps in paragraph 10 below and the provisions of ARTICLE XXVIII, Section B of this Agreement with said teacher regarding his performance as a teacher.

10. Reports

Evaluation reports shall be presented to each teacher in accordance with the following procedures:

a. Such reports shall be issued in the name of the evaluator. The evaluator is the person who observed the teaching performance as required in Section B. of this ARTICLE.

b. Such reports shall be addressed to the teacher.

c. Such reports shall be written in narrative form and shall include, when pertinent:

(1) Strengths of the teacher as evidenced during the period since the previous report.
(2) Areas of improvement needed by the teacher as evidenced during the period since the previous report. If these areas of improvement are not repeated in subsequent reports said areas shall be considered remedied.
(3) Specific suggestions as to measures which the teacher might take to improve his performance in each of the areas wherein weaknesses have been indicated.
(4) Upon request the evaluator shall demonstrate the proper method(s) to correct any areas of improvement.

teachers under the State Board regulations.

B.6. is negotiable.

B.7. is negotiable only if it is limited to those conferences where the individual teacher has reasonable cause to believe that the conference may result in discipline. ***Edison,*** PERC No. 83-100. Note that there is no right to such representation without a negotiated agreement so stating. A school board must consider the overall effect on the evaluation process of having a union representative present during an evaluation conference. Most administrators would find the presence of a union representative at an evaluation conference to be unnecessary and counterproductive.

B.8. is illegal as interference in the selection of evaluation criteria, and as contrary to the State Board regulations.

B.9. is negotiable insofar as paragraph 10 is legal. The reference in the last two lines should be to ARTICLE XXV Section B. of the Sample Agreement, concerning an employee's right to counseling by his immediate superior.

B.10. concerns the content of the evaluation report and is for the most part preempted by the State Board rules as they apply to tenured teachers. Only B.10.b., mandating that reports be addressed to the teacher, is a negotiable addition to tenured teacher evaluation procedures.

B.10.c. outlines the specific contents of the evaluation report. PERC has specifically ruled that B.10.c.(4) is not negotiable because it "relates to the evaluation." Following this logic it appears that all of B.10.c. is non-negotiable for non-tenured employees because it involves the substantive content of the report rather than the procedures involved, and therefore limits managerial prerogatives.

©1983 NJSBA

11. Final Evaluation

The annual summary evaluation of a teacher shall be determined by a compilation of the required evaluations as provided in this ARTICLE.

C. Personnel Records

1. File

A teacher shall have the right, upon request, to review the contents of his personnel file and to receive copies at Board expense of any documents contained therein. A teacher shall be entitled to have representative(s) of the Association accompany him/her during such review. At least once every ( ) years, a teacher shall have the right to indicate those documents and/or other materials in his file which he/she believes to be obsolete or otherwise inappropriate to retain. Said documents shall be reviewed by the Superintendent or his designee and if, in fact, they are obsolete or otherwise inappropriate to retain, they shall be destroyed. Disputes over the retention of said documents may be processed through the grievance procedure, commencing at Level Two.

2. Derogatory Material

No material derogatory to a teacher's conduct, service, character or personality or any material which could have an adverse effect on a teacher's status shall be placed in his/her personnel file unless the teacher has had an opportunity to review the material. The teacher shall acknowledge that he/she has had the opportunity to review such material by affixing his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material and his answer shall be reviewed by the Superintendent or his designee and attached to the file copy.

No Separate File

Although the Board agrees to protect the confidentially of personal references, academic credentials and other similar documents, it shall not establish any separate personnel file which is not available for the teacher's inspection.

D. Termination of Employment

Final evaluation of a teacher upon termination of his/her employment shall be concluded prior to any recommendation for severance and no documents and/or other material shall be placed in his/her personnel file of such teacher after severance or otherwise than in accordance with the procedure set forth in this ARTICLE.

Article XV, *Fair Dismissal Procedure*

B.11, according to PERC, is not negotiable because it concerns the content of the report.

Paragraph C., clause 1: To make disputes over whether or not materials included in the personnel file shall be expunged subject to the grievance process seems unwise. Since teachers generally have the ability to rebut materials contained in the file there seems little reason to become involved in controversy concerning expungement.

Paragraph D. was ruled non-negotiable by the Appellate Division in **East Brunswick** (unpublished opinion, May 3, 1982). The court stated, "An employer might well be greatly and quite legitimately interested in matters concerning an employee after he leaves even though the matter may not be related to his employment." The reason: the employee may reapply in the future, and intervening events such as a criminal conviction would be of legitimate interest to the board in considering reemployment.

In 1975, the Legislature enacted a statute and the State Board of Education enacted rules more specifically enforcing the rights of non-tenured teachers set forth in the **Donaldson** case.

These rules do not alter the basic relationship between a board and its non-tenured teachers. The nature of a non-tenured teacher's contract of employment with a school board is one for personal services with a

A. Fair Dismissal Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish a Fair Dismissal Committee consisting of ( ) members, ( ) members appointed by the Board and ( ) members appointed by the Association.

2. Responsibility

This Committee shall develop specific criteria which shall be used for nonrenewal of contract or termination of employment for nontenure teachers.

3. Report date

The recommended criteria shall be submitted for adoption to the Board and the Association no later than December 15, 19 , and shall become an addendum to this Agreement.

4. Distribution to nontenure teachers

The Board shall provide said criteria to all presently employed nontenure teachers, as soon as possible after adoption.

B. Notification of Status

1. Date

On or before April 30 of each year, the Board shall give to each nontenure teacher continuously employed since the preceding September 30 either:

a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary and benefits as may be required by law or agreement between the Board and the Association, or

b. A written notice that such employment shall not be offered.

2. Reasons

Any nontenure teacher who receives a notice of nonemployment may within five (5) days thereafter, in writing, request a statement of reasons for such nonemployment from the superintendent, which statement shall be given to the teacher in writing within five (5) days after receipt of such request.

3. Hearing

Any nontenure teacher who has received such notice of nonemployment and statement of reasons shall be entitled to a hearing before the Board, provided a written request for hearing is received in the office of the secretary of the Board within five (5) days after receipt by the teacher of the statement of reasons.

commencement and a termination date. When the terminal date has been reached, the contract is discharged and there are no longer any rights, duties, or obligations chargeable to either party to the previous agreement. In short, no relationship binding in law exists between the parties, and so it has been held in several instances by the Courts of the State of New Jersey.

A. A committee that is merely advisory to the board on this topic, and which neither binds the board nor obstructs its right to act in this area, is legally negotiable. **Commercial Township,** PERC No. 80-20. This is, however, the responsibility of the administration and the board; such committees are rarely created through the negotiations process.

A.4. is a term and condition of employment.

B.1. is a restatement of law and is unnecessary.

B.2. is an illegal modification of the statutory timelines found in **N.J.S.A.** 18A:27-3.2. The Appellate Division, in **East Brunswick** (see above), reversed PERC and found that the statute spoke in the imperative and did not permit modification through negotiations. Therefore, if you must have something in your contract on this issue, you should permit the employee up to **fifteen** (15) days to request a statement of reasons, and permit the board up to **thirty** (30) days to respond.

B.3. The Administrative Code very specifically requires an **informal appearance,** not a hearing. It is not to be an adversary proceeding; it should be of reasonable length; the teacher

4. Board determination

The Board shall issue its written determination as to the employment or nonemployment of said nontenure teacher for the next succeeding school year within five (5) days after the completion of the hearing. Said proceedings shall be completed and the Board's determination presented to the teacher no later than May 31.

5. Appeal to grievance procedure

If the teacher disagrees with the determination of the Board, he may submit the dispute through the grievance procedure as set forth in ARTICLE III of this Agreement, and said grievance shall commence at Level 3. In the event said grievance is submitted to arbitration, the arbitrator may restore the teacher to continued employment and may restore any loss of pay and/or benefits retroactively to which the teacher would be entitled under the terms and conditions of employment required by law or this Agreement between the Board and the Association.

C. Failure to Comply

Should the Board fail to give a nontenure teacher either an offer of contract for employment for the next succeeding year or a notice that such employment shall not be offered and upon request by the teacher to the superintendent, a statement of reasons and a hearing, and in the event of such hearing shall fail to make and serve a copy of the determination, all within the time and in the manner provided by this ARTICLE, the Board shall be deemed to have offered to that teacher continued employment for the next succeeding school year upon the terms and conditions of employment as may be required by law or agreement between the Board and the Association.

may be represented by one person or counsel; witnesses may be presented with no cross-examination; appearances shall be in private. The code at **N.J.A.C.** 6:3-1.20(a) provides that the request must be submitted within ten (10) calendar days. The limitation to five (5) is probably illegal under **East Brunswick.**

B.4. The Administrative Code supporting the non-tenure evaluation law requires that the board's written determination be issued within **three** days of the informal appearance, not the five days listed in this clause.

Additionally, there is no requirement that a written decision issue prior to May 31st. Assume that notice not to reemploy was given on April 30th. The statement of reasons is requested on May 15th. The reasons are given on June 14th. On June 24th (the ten day period set forth in the Administrative Code), the affected teacher seeks an appearance which is held on July 14th, with a written determination issued on July 17th. Of course, most boards will proceed more quickly than this but if both parties exhausted each time limit, there would be no way to finish the process before mid-July.

B.5. As stated above, PERC has held that arbitrators have no authority to review a board's decision not to renew a non-tenured teacher. Arbitrators can hear grievances over procedural violations under this article, but, even if a procedural violation is found, the arbitrator is without any power to order reinstatement. **Fair Lawn,** App. Div., June 2, 1980, and **Fairview,** PERC No. 80-18.

C. attempts to expand the statutory right of teachers to **automatic reemployment** due to a procedural error by the board. The statutes provide that an employee is deemed to be offered an employment contract if the board fails to offer a contract or notice of non-renewal by April 30. This clause would provide such an automatic offer of a contract if the board missed **any** of the timelines in the article, i.e., the 30 day limit on providing a statement of reasons, the 30 day limit for scheduling the informal

D. Notification of Intention to Return

If the teacher desires to accept such employment, he shall notify the Board of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In default of such notice the Board shall not be required to continue the employment of the teacher.

E. Termination of Employment

Any nontenure teacher who receives a notice that his employment shall be terminated shall be entitled to a statement of reasons and a hearing as provided for in paragraphs 2, 3, 4, and 5 of this Section except that a determination of the Board shall be made and served thirty (30) days before the expiration of the notice period provided for in said contract. Should the Board fail to comply therewith, then said notice of termination shall be invalid and of no force and effect and the employment of the teacher shall continue as if such notice had not been given.

Article XVI, *Complaint Procedure*

A. Procedural Requirement

Any complaints regarding a teacher made to any member of the administration by any parent, student, or other person which does or may influence evaluation of a teacher shall be processed according to the procedure outlined below.

B. Meeting with Principal or Immediate Superior

The principal or immediate superior shall meet with the teacher to apprise the teacher of the full nature of the complaint and they shall attempt to resolve the matter informally.

C. Right to Representation

The teacher shall have the right to be represented by the Association at any meetings or conferences regarding such complaint.

D. Procedure

Step 1.

In the event a complaint is unresolved to the satisfaction of all parties, the teacher may request a conference with the complainant to attempt to resolve the complaint. If the complaint is unresolved as a result of such conference, or if no mutually acceptable conference can be agreed on, the complaint shall move to Step 2.

Step 2.

Any complaint unresolved under Step One at the request of the teacher or the complainant shall be reviewed by the building principal or counterpart supervisor in an attempt to resolve the matter to the satisfaction of all parties concerned.

Step 3.

Any complaint unresolved at Step Two may be submitted in writing by the complainant or the teacher to the building principal or counterpart supervisor who shall forthwith forward a copy to the superintendent or his designee and the complainant.

Step 4.

Upon receipt of the written complaint the superintendent or his designee shall confer with all parties. The teacher shall have the right to be present at all meetings of the superintendent or his designee and the complainant.

appearance and the three day limit for a written determination by the board following such an appearance. This is probably illegal. PERC has held that procedural violations in the evaluation process shall not be cause for reinstatement by an arbitrator; it follows that procedural errors in the appeal process also couldn't result in reinstatement.

D. is a restatement of law.

E. has stumped the entire Labor Relations Department. Any reader having information on the meaning or intent of this clause is invited to contact us as soon as possible. Prizes will not be given, but we'll publish winning entries. In the meantime, please don't put this into your contract.

The essence of this article deals with a complaint lodged against a teacher, generally from an outside non-administrative source, for which the teacher grieves for relief and remedy against a potentially damaging influence which the complaint may have against the teacher's evaluation report.

Very few boards have such a complaint procedure in their agreement.

It would appear that Paragraph A., B. and C. of this article should alone suffice to ensure fair and equitable treatment to any complaint so lodged against a teacher.

PERC has held that any complaint procedure that binds a third party, such as a parent or student, is non-negotiable. **North Plainfield,** PERC No. 83-120. It seems that Step 7, which permits the submission of the complaint to arbitration, would be illegal.

Step 5.

If the superintendent or his designee is unable to resolve a complaint to the satisfaction of all parties concerned, at the request of the complainant or the teacher he shall forward the results of his investigation along with his recommendation, in writing, to the Board and a copy to all parties concerned.

Step 6.

After receipt of the findings and recommendations of the superintendent or his designee, and before action thereon, the Board shall afford the parties the opportunity to meet with the Board and show cause why the recommendations of the superintendent or his designee should not be followed. Copies of the action taken by the Board shall be forwarded to all parties.

Step 7.

Any complaint unresolved under Step 6. may be submitted by the teacher to the grievance procedure as set forth in ARTICLE III of this Agreement and shall commence at Level 3.

Article XVII, *Teacher Facilities*

A. Listing of Facilities

By the beginning of the 19 - school year, each school shall have the following facilities:

1. All rooms which are used for purposes of instruction during any portion of the months of May, June, July, August, September, and October shall be air conditioned;
2. Space for each teacher within each instructional area in which he teaches to store his instructional materials and supplies;
3. An air-conditioned teacher work area containing adequate equipment and supplies to aid in the preparation of instructional materials;
4. An appropriately furnished and air-conditioned room which shall be reserved for the exclusive use of teachers as a faculty lounge. Although teachers shall be expected to exercise reasonable care in maintaining the appearance and cleanliness of said lounge, it shall be regularly cleaned by the school's custodial staff.
5. A private pay telephone in each faculty lounge for the exclusive use of teachers;
6. A serviceable desk, chair, and filing cabinet for the exclusive use of each teacher;
7. A communication system so that teachers can communicate with the main building office from their classrooms;
8. Well-lighted and clean teacher rest rooms, separate for each sex and separate from the students' rest rooms;
9. A separate, private dining area for the exclusive use of the teachers;
10. Free and adequate off-street paved parking facilities, which are protected against vandalism, properly maintained, and identified exclusively for teacher use;
11. Suitable, private closet space with lock and key for each teacher to store coats, overshoes, and personal articles;
12. Copies, exclusively for each teacher's use, of all texts used in each of the courses he is to teach;
13. Adequate chalkboard space in every classroom;
14. A complete and unabridged dictionary in every classroom;
15. Adequate books, paper, pencils, pens, chalk, erasers and other such mater[illegible] required in daily teaching responsibility.

All of the items demanded in Paragraph A. must be examined in light of the existing facilities in the district to determine the extent of change or if, indeed, change is at all possible or necessary.

Most of items 1 through 11 were found by PERC to be required topics of negotiations. Items 12 through 15 were deemed illegal topics, as related to the means and methods of providing education to the students. PERC rejected the union argument that these were really "tools of the trade." **Byram,** PERC No. 76-27, aff'd in part, 152 **N.J. Super.** 12 (App. Div., 1977).

B. Special Clothing

By the beginning of the 19 - school year, the Board shall provide gym uniforms for physical education teachers, smocks for art and home economics teachers, laboratory coats for laboratory science teachers, shop coats for vocational and industrial arts teachers. Proper laundering service for all of said items shall be provided without charge to the teacher.

Paragraph B. must be considered strictly as a cost item.

C. Work Room and Office

By the beginning of the 19 - school year, an appropriate room and other facilities for teachers who work in more than one school building shall be assigned

Paragraph C. again presents a question concerning the allocation of space in specific schools. It must be to them in each school in which they work to permit the effective discharge of their responsibilities to their pupils. Such teachers shall also be assigned a single classroom or office for their exclusive use outside of regular teaching hours, with a desk or other equivalent facility and a place to store materials and supplies for their personal use.

D. Answering Service

The Board agrees to provide an answering service between p.m. and a.m. for teachers to report unavailability for work. Once a teacher has reported unavailability, it shall be the responsibility of the administration to arrange for a substitute.

E. Vending Machines

Upon the request of the Association, vending machines shall be installed in the teachers' lounge and teachers' lunchroom areas. The proceeds from all such machines shall be placed in a student scholarship fund created for that purpose. Awarding of scholarships shall be administered jointly by the Association and the superintendent. The Teacher-Administration Liaison Committee in each building established according to the provisions of ARTICLE XXII of this Agreement shall develop mutually acceptable procedures for servicing said machines and accounting for the funds.

F. Keys

In order to permit freedom of access both during and after regular school hours, all teachers shall be given keys to the faculty lounge, teacher work area, and interior hallway gates of their base school, and upon request, and subject to reasonable regulation, shall be provided with a key or other means of access to an outside door in their area of the building during nonschool hours.

G. Student Transportation

By the beginning of the 19 - school year, the Board shall provide a vehicle and a driver for the transportation of individual students or small groups of students. Said vehicle and driver shall be used to transport sick students from school to home during the course of the school day.

Article XVIII, *Teacher-Administration Liaison*

A. Building Level Faculty Council

1. Organization

The Association shall select a Faculty Council for each school building which shall meet with the principal at least once a month during the school day for the duration of the school year. Said Council shall consist of not more than (1) member for every ( ) teachers in the school building, but shall in no event have less than ( ) members.

2. Areas for Faculty Council consideration

Areas for consideration by the Council shall include but not be limited to school building level decisions regarding:

a. Administration of this Agreement;
b. Facilitation of programs and recommendations of the Instructional Council hereafter established in ARTICLE XXIII of this Agreement;
c. Revision and development of building policies and practices.

B. Meetings with Superintendent

The Association's representatives shall meet with the superintendent at least once a month during the school year to review and discuss current school problems and practices and the administration of this Agreement.

examined by the board in light of maintenance of flexibility with respect to the utilization of space, now and in the future.

The Teacher-Administration Liaison Committee clause is actually found in ARTICLE XVIII.

Paragraph F. presents essentially a security problem with respect to the distribution of keys, and therefore, it must be so examined.

This is not a term and condition of employment, since it relates to students and not to teachers.

PERC has held that a Board-Teacher Liaison Committee proposal was a required topic for negotiations. This committee would have a majority of management representatives, would engage in discussions, not negotiations, and would meet at the agreement of the parties. The clause specifically guaranteed that the existence of the committee would not preclude the board from exercising any of its legal rights. With these caveats, PERC ruled that such a liaison committee, even though it would discuss only non-negotiable matters, was itself a required topic for negotiations. **Commercial Twp.**, PERC No. 80-20.

It is likely, therefore, that the establishment of monthly meetings between the Faculty Council and the school administration to discuss non-negotiable matters is legally negotiable, as a non-binding forum for

Article XIX, *Instructional Council*

A. Organization

1. Purpose

An Instructional Council shall be established and shall meet not later than 19 . The purpose of the Council shall be to strengthen the education program through recommendations, research, implementation, and evaluation by the superintendent and the Association to best meet the needs of the students, the schools, and the community. The Council may consider, but not be limited to, advising the Board and the Association on such matters as curriculum improvements, teaching techniques, instructional organizational patterns, experimentation, extra curricular programs, in-service training and staff development, pupil testing and evaluation, philosophy and educational goals of the district, teacher recruitment, research, educational specifications for buildings, and other related matters regarding the effective operation of the School District.

2. Membership

The Council shall consist of ( ) representatives appointed by the superintendent and ( ) representatives appointed by the Association.

3. Committees

The Council shall be authorized to establish sub-committees or ad hoc committees for specific projects to allow for those who would be affected by Council recommendations to have an opportunity to be involved.

4. Individual initiative for suggestions

The Council shall encourage the initiation of ideas and suggestions for projects by individual teachers, departments, grade levels, Association committees, administrators, Board members, students, parents, or other interested parties.

5. Additional members

Nothing in this ARTICLE shall be interpreted to prevent the Council from consulting or appointing to its committees such additional teachers, administrators, professional advisors, students, parents, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes. In the event that professional consultants are added, the Board agrees to provide adequate funds to pay for each such service.

6. Rules of procedure

The Council shall establish its own rules of procedure and shall provide for a rotating chairman who shall be responsible for the arrangement and conduct of meetings.

7. Meetings

The Council shall meet at least once each month.

8. Information

The Council and its sub-committees shall be provided with the same access to available school district information as provided to the Association as specified in ARTICLE V. Section A of this Agreement.

B. Reports

1. Board and Association action

The Board and the Association shall consider and study all written recommendations submitted by the Council for action. If the Board or the Association refuses to adopt any such recommendations, it shall state the specific reasons for such refusal in writing to the Council.

2. Minority reports

Reports of the Council or any sub-committee established by the Council may include minority as well as majority views.

C. Budget

As of September 1, 19 , the Board shall provide ($) dollars to the Instructional Council for the purpose of assisting said Council in establishing effective procedures for decision-making in implementing the responsibilities stated above in the School District.

D. Teacher Participation

1. Pay

Teachers who serve on the Instructional Council or any sub-committee organized by

the expression of teacher concerns over non-negotiable matters.

It is not clear whether PERC's analysis regarding a Board-Teacher Liaison Committee will be applied to Instructional Councils. The language in the Sample Agreement is much broader than that in the PERC case, and potentially much more restrictive.

Boards receiving this demand should consider establishing such a committee outside of the labor agreement, at the building and/or district level, for on-going consultation on non-negotiable matters.

it beyond the regularly scheduled in-school day or in-school year shall be paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Released time

In addition to whatever unassigned time they may be entitled to under the terms of this Agreement, teachers who are members of the Instructional Council or any of its sub-committees shall be provided with released time at the following rate for the purpose of working on any of the projects defined above:

a. Elementary Schools— ( ) periods per day
b. Junior High Schools— ( ) periods per day
c. Senior High School— ( ) periods per day
d. Other — ( ) periods per day

E. Clerical Assistance

Adequate secretarial and clerical assistance shall be provided for the Council.

Article XX, *Sick Leave*

A. Accumulative

As of September 1, 19 , all teachers employed shall be entitled to ( ) sick leave days each school year as of the first official day of said school year whether or not they report for duty on that day. Unused sick leave days shall be accumulated from year to year with no maximum limit.

The amount of sick leave granted beyond ten days a year is purely a matter of economic ability and educational need. Any concession in this area should achieve an equivalent concession by the union.

B. Transfer from Other Districts

As of September 1, 19 , whenever the Board employs a teacher who has an unused accumulation of sick leave days from another school district in New Jersey, the Board shall grant additional sick leave credit in additional to the annual and accumulated sick leave provided in Section A of this ARTICLE as follows:

1. For the first year of employment in the School District a minimum of ( ) days or such lesser amount as may have been accumulated in the former district.

2. For each subsequent year of employment in the School District an additional ( ) days until all of the days accumulated in the former district have been credited.

3. The accumulation of sick leave days from another district shall be credited in accordance with the procedure outlined above after certification from the prior employing school district. The days of sick leave so credited may be used immediately or if not so used shall be accumulative for additional leave thereafter as may be needed.

4. The aforementioned sick leave credit shall be given to any presently employed teacher under the provisions described above.

B.3. The transfer of sick leave credit is not required by law and has been negotiated into very few contracts.

C. Nonaccumulative

Nonaccumulative additional sick leave benefits shall be allowed to teachers according to the following schedule:

(Local Association option on type of additional nonaccumulative sick leave to be submitted.) .

C. PERC, the State Board of Education, and the Appellate Divison have all determined that automatic grants of sick leave beyond accumulated days are prohibited by **N.J.S.A** 18A:30-6. See, for example, **Piscataway,** 152 **N.J. Super.** 235 (App. Div., 1977).

D. Summer School

As of September 1, 19 , teachers employed in the summer school program shall be granted ( ) nonaccumulative sick leave days.

Paragraph D. covers summer school jobs which are not in the bargaining unit. For this reason, this clause should be rejected.

E. Notification of Accumulation

Teachers shall be given a written accounting of accumulated sick leave days no later than September of each school year.

88

F. Retirement

Upon retirement, the retiring teacher shall be compensated for his or her accumulated sick leave at the rate of pay at the time of retirement.

See "Payment for Unused Sick Leave" at page 10 of **Negotiations 83** for a detailed discussion of this matter.

Article XXI, *Temporary Leaves of Absence*

A. Types of Leave

As of the beginning of the 19 - school year, teachers shall be entitled to the following temporary nonaccumulative leaves of absence with full pay each school year:

1. Personal

( ) days leave of absence for personal, legal, business, household or family matters which require absence during school hours. Application to the teacher's principal or other immediate superior for personal leave shall be made at least ( ) day(s) before taking such leave (except in the case of emergencies) and the applicant for such leave shall not be required to state the reason for taking such leave other than that he is taking it under this Section.

See "Personal Leave," pages 7 to 9 of **Negotiations 83** for a detailed discussion of what should be contained and avoided in a personal leave clause.

2. Religious

Up to ( ) days per school year for observance of religious holidays, where said observance prevents the teacher from working on said days.

A.2. PERC has held that contract clauses granting paid leave for religious holidays, which is not deducted from personal or vacation days equally available to non-religious employees, is unconstitutional. **Hunterdon Central High School Board of Education,** PERC No. 80-4, aff'd, 86 **N.J.** 43 (1981). Permitting employees to use general personal or vacation leave for religious observance, on the other hand, is legally negotiable. **Haddonfield,** PERC No. 82-106.

3. School visitation

Up to ( ) days for the purpose of visiting other schools or attending meetings or conferences of an educational nature.

4. Community service leave

Any teacher who is a member of a community service organization or who is requested by any such organization to attend or participate in meetings or programs of the organization conducted during school hours shall be granted time off with pay for such purpose upon request.

5. Conferences of affiliates

Up to ( ) days for ( ) representatives of the Association to attend conferences and conventions of state and national affiliated organizations.

6. Legal

Time necessary for appearances in any legal proceeding connected with the teacher's employment or with the school system or in any other legal proceeding if the teacher is required by law to attend.

7. Death

Up to ( ) days at any one time in the event of death or serious illness of a teacher's spouse, child, son-in-law, daughter-in-law, parent, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, and any other member of the immediate household. Teachers shall be granted up to ( ) days in the event of death of a teacher's friend or relative outside the teacher's immediate family as defined above. In the event of the death of a teacher or student in the School District, the principal or immediate superior of said teacher or student shall grant to an appropriate number of teachers sufficient time off to attend the funeral.

8. Summer school

Up to a total of ( ) days at the end of a school year and/or at the beginning of a school year, as may be required to attend summer school classes and/or to travel to the place where such classes are to be held.

Paragraphs A.3. to A.9. must be analyzed locally regarding their cost and effect on administrative and educational efficiency. A.6. should, at the least, not include legal appearances where the board and teacher are adversaries, e.g. tenure hearings and PERC hearings.

9. Marriage and honeymoon

Up to ( ) days for the purpose of marriage and honeymoon or up to ( ) days for the purpose of attending the marriage of a member of the immediate family.

10. Temporary Military

Time necessary for persons called into temporary active duty of any unit of the U.S. Reserves or the State National Guard. A teacher shall be paid his regular pay in addition to any pay which he receives from the state or federal government.

11. Good cause

Other leaves of absence with pay may be granted by the Board for good reason.

B. In Addition to Sick Leave

Leaves taken pursuant to Section A above shall be in addition to any sick leave to which the teacher is entitled.

C. NJEA Convention

Each teacher who attends the NJEA Convention shall fully be compensated for all costs incurred for travel, tolls, meals and hotel.

Article XXIII, *Extended Leaves of Absences*

A. Association

The Board agrees that up to ( ) teachers designated by the Association shall, upon request, be granted a leave of absence without pay for up to ( ) year(s) for the purpose of engaging in activities of the Association or its affiliates.

B. International and Federal Programs

A leave of absence without pay of up to ( ) years shall be granted to any teacher who joins the Peace Corps, VISTA, National Teachers Corps, or serves as an exchange teacher or overseas teacher, and is a full-time participant in either of such programs, or accepts a Fullbright Scholarship.

C. Outside Teaching

A teacher on tenure shall be granted a leave of absence without pay for up

A.9. It should be possible for every teacher to schedule their marriage during winter, spring or summer vacations.

A.11. can present serious difficulties especially to boards who have "past practice" or "savings clauses." The granting of additional leaves might establish an unwanted precedent. Unfortunately, a labor contract sometimes has the effect of limiting the ability of an employer to grant fringe benefits in excess of the contract simply because the employer's action to help employees in a given situation can force the employer to grant the same benefit in all similar cases.

C. First, Chapter 123 prohibits an employer from assisting a union. The NJEA is a union. While no decision in this area has been issued, it is very possible that any agreement to this clause or any payment under it is a violation of law.

Practically, paragraph C. is unacceptable even if legal. There is no limit on any expense incurred. The cost to the board could be enormous if only a portion of teachers sought reimbursement for their expenses. No boards, to our knowledge, have agreed to such a clause.

The granting of any of the leaves in this area, other than sick leave, should be upon application to the superintendent for approval unless the board specifically provides otherwise. Such applications should provide sufficient notice for the superintendent to secure a substitute, or the related clause may be ruled invalid. **South River,** PERC No. 81-108.

to ( ) years to teach in an accredited college or university, private school or other public school district.

D. Military

Military leave without pay shall be granted to any teacher who is inducted or enlists in any branch of the armed forces of the United States for the period of said service and three (3) months thereafter, or three (3) months after recovery of any wound or sickness at time of discharge. A similar leave shall be granted to the spouse of any teacher who is so inducted or who enlists to join him for the period of special training in preparation for duty overseas in combat zones.

Maternity

1. Natural Birth

The Board shall grant maternity leave without pay to any teacher upon request subject to the following stipulations and limitations:

(a) Maternity leave shall commence and terminate, on the date requested by the teacher.

(b) Any teacher granted maternity leave without pay according to the provisions of this section may at her discretion elect to use all or any part of her accumulated sick leave during period of such absence and receive full pay and benefits for the same.

(c) Any teacher granted maternity leave shall at her request be restored to the exact same teaching position, subject area, and grade level vacated at the commencement of said leave.

(d) No teacher shall be required to leave work because of pregnancy at any specific time prior to expected childbirth nor be prevented from returning to work after childbirth solely on the ground that there has not been a time lapse of specific duration between childbirth and the desired date of return.

(e) The Board shall not remove any teacher from her duties during pregnancy unless the teacher cannot produce a certificate from her physician that she is medically able to continue teaching.

(f) The Board shall not discriminate against any person in violation of N.J.S.A. 10:5-1 et seq. the Law Against Discrimination, nor in violation of the Constitutions of the State of New Jersey and of the United States.

2. Any teacher who does not elect to take a maternity leave may continue to perform her duties as long as physically able to do so and will be entitled to return to her duties when her physician certifies that she is physically able to do so. The period of such absence will be deemed the same as for any other physical disability and she will be entitled to her annual and accumulated sick leave with pay during the period of absence.

This maternity leave clause has numerous problems. Paragraph 1.(a) is unacceptable because it ignores the negative impact upon the continuity of instruction that occurs when leaves begin and end during the school year.

At the least, **all maternity leaves should terminate at the beginning of a school year,** so that a substitute is not displaced in May or June. Some boards and unions have agreed that **maternity leaves will commence at the marking period nearest the onset of disability.** Others permit the leave to commence **following** the period of disability. Under such a clause, a pregnant teacher works until she is physically unable to do so; takes sick leave for the period of disability (generally, 30 days before and after the birth); and then begins her unpaid maternity leave.

Paragraph 1.(b) has been ruled illegal when applied to any period of time when the employee is not truly disabled. If an employee has accumulated 90 sick days, uses 35 of those days before and after the birth of her child, and then takes a maternity leave of absence for the purpose of raising the child, she is prohibited from utilizing her remaining sick days during this leave of absence. **Hackensack,** unpublished opinion (App. Div., March 9, 1982).

Paragraph 1.(c) is illegal because it interferes in the board's right to assign staff.

Paragraphs 1.(d) and (e) are restatements of current case law. See **Castellano,** 79 **N.J.** 407 (1979).

Paragraph 1.(f) is the kind of sweeping restatement of law that should never be included in a negotiated agreement. See page 60 of this Analysis for a discussion of how to handle such clauses.

Paragraph 2 is also a restatement of law.

©1983 NJSBA

3. Adoption

Any female teacher adopting an infant child shall receive similar leave which shall commence upon her receiving *de facto* custody of said infant, or earlier if necessary to fulfill the requirements for the adoption. No teacher on maternity leave shall, on the basis of said leave, be denied the opportunity to substitute in the School District in the area of her certification or competence.

E.3. Adoption differs from pregnancy-related disability and sickness. It is akin to child-rearing leave. There is no obligation to agree to adoption leave. This clause is discriminatory in that it applies only to female teachers.

F. Illness in Family

A leave of absence without pay of up to ( ) year(s) shall be granted for the purpose of caring for a sick member of the teacher's immediate family. Additional leave may be granted at the discretion of the Board.

Any time the board agrees to the phrase "immediate family" in the contract, it should be sure to clearly define who is included in that relationship.

G. Political

The Board shall grant a leave of absence without pay to any teacher to campaign for or serve in a public office, or to campaign for a candidate for a public office other than himself.

If a board is willing to agree to leaves for political purposes, it should limit the commencement date to the beginning of a school year, and the termination date to either the start of the first semester or marking period following the election, or to the beginning of the next school year.

H. Good Cause

Other leaves of absence without pay may be granted by the Board for good reason.

H. presents the same potential problems as Article XXI.A.11, discussed on page 90 of this book.

I. Return from Leave

1. Salary

Upon return from leave granted pursuant to this ARTICLE, a teacher shall be considered as if he were actively employed by the Board during the leave and shall be placed on the salary schedule at the level he would have achieved if he had not been absent.

2. Benefits

All benefits to which a teacher was entitled at the time his leave of absence commenced, including unused accumulated sick leave and credits toward sabbatical eligibility, shall be restored to him upon his return, and he shall be assigned to the same position which he held at the time said leave commenced, if available or, if not, to a substantially equivalent position.

J. Extension and Renewals

All extensions or renewals of leaves shall be applied for and granted in writing.

I.1. There is no requirement that credit for teaching be given during periods of extended leave without pay. It is rarely done unless the teacher works for the district for over 90 days in the academic year of the leave.

Article XXIV, *Sabbatical Leaves*

A. Purpose

A sabbatical leave shall be granted to a teacher by the Board for study, including study in another area of specialization, for travel, or for other reasons of value to the school system.

A. This language will result in teachers receiving paid sabbatical leaves to do nothing of value to the district, e.g., irrelevant travel or study for a career outside of teaching. Boards should insist that the primary purpose of any sabbatical is to improve the teacher's value to the district upon return.

A number of boards have recently succeeded in deleting sabbatical leave clauses from their contracts.

B. Conditions

Sabbatical leave shall be granted, subject to the following conditions:

B. The word "shall" seems to remove any discretion from the board.

1. Percentage of teachers

If there are sufficient qualified applicants, sabbatical leaves shall be granted to a minimum of (%) percent of teachers at any one time.

2. Requests

Requests for sabbatical leave must be received by the superintendent in writing in such form as may be mutually agreed on by the Association and the superintedent, no later than January 1, and action must be taken on all such requests no later than February 1, of the school year preceding the school year for which the sabbatical leave is requested.

3. Minimum time to qualify

The teacher has completed at least seven (7) full school years of service in the School District.

4. Pay

A teacher on sabbatical leave (either for one-half (½) of a school year or for a full school year) shall be paid by the Board at (%) percent of the salary rate which he would have received if he had remained on active duty if said leave is for study and at (%) percent if for travel or other reason.

5. Return

Upon return from sabbatical leave, a teacher shall be placed on the salary schedule at the level which he would have achieved had he remained actively employed in the system during the period of his absence and he shall be credited with all other benefits for which he would have entitled during the period of his leave and continuing thereafter upon his return.

Article XXV, *Professional Development and Educational Improvement*

A. Purpose

In our rapidly changing society teachers must constantly review curricular content, teaching methods and materials, educational philosophy and goals, social change and other topics related to education. The Board recognizes that it shares with its professional staff responsibility for the upgrading and updating of teacher performance and attitudes. The Board and the Association support the principle of continuing training of teachers and the improvement of instruction. The parties further agree that each teacher should fulfill the obligation for professional improvement in ways that best serve his own problems, functions, interests, and needs.

B. Assistance for Teachers

Within any one (1) week, a teacher who shall so request shall be granted at least thirty (30) minutes of counseling with his immediate superior. Such meetings shall be scheduled within the teacher work day and the teacher released from other duties therefor.

C. Programs

The Board agrees to implement the following at the beginning of the 19 - school year.

1. Pay and expenses for required training

To pay the full cost of tuition and other reasonable expenses incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions, or

B.1. By granting only a minimum, there is no way to predict the maximum number of teachers receiving sabbaticals. This is too open-ended for most boards. Besides, what will happen if the minimum number of teachers don't apply?

B.2 The January application date may be too late for proper budgeting by the board. The February date may not give the board enough time to evaluate the applications.

B.3.,4. and 5. are standard, except that most clauses don't permit sabbaticals for "travel or other reason" unless related to the teacher's responsibilities in the district. Most districts require that teachers who receive sabbatical leaves return to the district for one or two years following the sabbatical, or reimburse to the board the salary received during the sabbatical leave. See **Negotiations 80**, pp. 9-11, for more detail.

The question of the board agreeing to make certain payments in connection with this article is an appropriate subject for collective negotiations under the law.

There is no need for A. Moreover, the second and fourth sentences are probably illegal in light of **Ridgefield Park.**

Paragraph B. provides for further reduction in the time a teacher might spend with students. Certainly such time can be found, without contract language, during preparation periods or, for elementary teachers, immediately after school. As professionals in other areas regularly expect to devote additional time to their profession beyond an eight hour day, so should teachers.

other such sessions which a teacher is required and/or requested by the administration to take. Said teacher shall also be compensated for all time spent in actual attendance at said sessions beyond his regular working day and year at his regular rate as defined in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Professional Development Committee for reimbursement

a. To establish a Professional Development Committee to act upon requests from teachers for authorization to attend courses, workshops, seminars, conferences, in-service training sessions or other such sessions. Within ( ) days after signing this Agreement, the superintendent and the president of the Association shall each appoint ( ) members to the Committee and they shall select a chairman from among themselves. The superintendent and the president of the Association may, from time to time, replace members appointed by them.

b. To pay the reasonable expenses (including fees, meals, lodging and/or transportation) incurred by teachers who attend such sessions with the approval of the Professional Development Committee.

3. In-service workshops, conferences, programs

a. The Board shall provide in-service professional improvement programs which shall be cooperatively planned in the instructional council to meet priorities jointly determined by the Association and the administration. In-service programs shall be conducted during the in-school teacher workday if teacher attendance is required. All programs conducted during the summer shall be voluntary and compensated at the rate set forth in ARTICLE VII, Section A, paragraph 4.

b. Teachers who participate in an in-service program shall be given credit for each program as provided in schedule D.

4. Professional library

To expend up to ($) dollars per teacher each school year to purchase books, equipment and/or other educational resource materials, as may be recommended by the aforementioned Professional Development Committee for use by the professional staff for professional development and educational improvement. The Board shall provide adequate space for housing said books and materials in convenient and readily accessible locations.

5. Recruitment

To establish a Recruitment Committee to study and improve teacher recruitment. This Committee shall develop ways to utilize incumbent teachers who agree to be recruiters. The superintendent and the president of the Association shall each appoint ( ) members to this Committee and they shall choose a chairman from among themselves. Teachers who participate as members of this Committee shall suffer no loss of compensation and shall be reimbursed for any travel and expenses incurred in the performance of their functions.

6. Summer program for professional development

To appropriate ($) dollars for a Voluntary Summer Program for Professional Development to afford teachers the opportunity to participate in activities which they propose and which shall contribute to the professional development of the participating teacher and to the educational advantage of the children served by the District. Participation in this program shall take place for a period of not more than one (1) month during July and/or August and participants shall be remunerated on a prorated basis, according to their monthly salary for the school year beginning July 1 of the summer employed.

a. Teachers may apply for this program no later than
Applications shall be submitted to a Screening Committee consisting of ( ) members selected by the superintendent and ( ) members selected by the Association. The Committee shall receive, review, and approve or disapprove applications. All applicants shall be notified no later than May 1 of each year as to whether their applications have been approved.

If the committee under C.2. is entrusted with determinations of the value of various in-service and professional development courses or programs, this is probably an illegal subject.

Ridgefield Park would seem to make the first sentence of C.3.a. an illegal topic, particularly if this is meant to prohibit the introduction of inservice topics which the administration, but not the union, deems appropriate. The balance of a. and all of b. relate to terms and conditions of employment.

C.4. is not a required topic of negotiations. C.4. through 8 are almost never contained in contracts.

C.5. This is not a term and condition of employment but is a major educational policy function and is, therefore, an illegal area.

94

b. The funds appropriated for this program shall be used to finance projects evaluated by the Screening Committee as fulfilling the objectives of the program.

c. The Screening Committee shall establish its own rules of procedure.

7. Innovative grants

To appropriate (\$) dollars to establish a grant program to make funds available to teachers interested in designing and implementing innovative educational ideas and techniques.

a. The aim and purpose of this Section shall be to encourage creative and innovative teachers to experiment in order to better meet the educational needs of the students of the School District.

b. An Innovative Review Committee consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association shall be established no later than October 1, 19 Said Committee shall receive, review, and approve or disapprove applications for grants. Applications for grants shall be submitted no later than and awards shall be announced no later than

c. No individual grant under the terms of this Section shall exceed (\$) dollars.

d. The Innovative Review Committee shall establish its own rules of procedure.

8. Experimentation

a. The Association and the Board have a mutual responsibility to promote better instruction. The Board welcomes Association participation in all aspects of strengthening the education program to best meet the needs of the students, the schools, and the community.

b. The Association may participate in any aspect of an experimental or other project or program. Such participation shall include, but not be limited to, all phases of proposals, inquiry, study, research, deliberations, recommendations, implementation, evaluation and adoption. Any aspect of an experimental program which would affect the terms and conditions of teacher employment shall be negotiated with the Association before implementation.

Article XXVI, *Supervision of Student Teachers*

A. Mutual Responsibility

There is a continuing need for the recruitment of able teacher candidates and for the improvement of their preparation. Teachers enlisted to teach in any situation must be provided an education based on the best academic preparation supplemented with numerous planned experiences which can provide a working understanding of the students and classroom with which teachers must function effectively. Through the cooperation of the School District and the Association, the student teacher is provided with the setting to apply the professional knowledge and skills, theories, and philosophies which have been developed through college courses and related experiences. The Board and the Association accept the joint responsibility to prepare teachers and to provide student teachers with direct field experiences in the School District that are relevant to the teaching act.

B. Procedures

The following procedures shall govern the supervision of student teachers:

1. Teaching experience

No teacher shall have a student teacher under his supervision unless said teacher has had at least three years of teaching experience, with the most recent year in his present position.

2. Voluntary participation

Supervision by a teacher of a student teacher shall be voluntary. Each teacher shall be polled prior to any school year for willingness to participate in the student teaching program, but this shall not be construed as acceptance of any particular student teaching assignment.

3. Academic record of student teachers

Prior to the assignment of student teachers, the superintendent shall request each prospective student teacher to provide prospective cooperating teachers a transcript

C.8.a. is a general goal statement and should be rejected. It belongs in board policy, not in a labor contract.

With respect to any committee set up to review educational policy or programs, boards must be certain that input is not limited to the union. T & E requires broad participation by teaching staff members and, where appropriate, by the community. No contractual agreement should limit that participation.

Consultation in the area of student teacher supervision seems desirable. Control of that program either by individual teachers or by the union does not. Almost no district in the State has negotiated on this topic.

The control over student teaching programs by the union through negotiated agreement is illegal. Certain provisions of this article do relate to teachers' terms and conditions of employment and are required subjects.

Under **Ridgefield Park,** it would appear that the following provisions are illegal: B.1., B.2., B.3., B.4., B.7., B.8., B.9.b., B.10., B.11., B.12.a. and b. and B.13. Those governing terms and conditions would seem to be: B.5., B.6., B.9.a and B.12.c.

Some of the illegal matters are simply not terms and conditions of employment of the teacher (such as B.11., already covered by State law; it does not directly affect a teacher's working conditions). Others go to major educational policy-making (such

©1983 NJSBA

of college courses and grades to date, statements relative to his academic proficiency from not fewer than ( ) of his college instructors, and a statement from his college assessing his potential strengths and weaknesses as exhibited in any previous field experiences or related training programs in classroom procedures or student relationships.

4. Consent

Each prospective cooperating teacher may accept or reject any student teacher. The teacher shall receive the request to take a student teacher at least ( ) weeks prior to the student's introduction to the classroom.

5. Released time

Each cooperating teacher shall be provided with released time with pay for attendance at regularly scheduled orientation and evaluation sessions sponsored by a student teacher's college or university.

6. Assignments

A cooperating teacher shall not involuntarily be given additional assignments outside of his regular responsibilities during the period he is supervising a student teacher.

7. Assuming responsibilities

The cooperating teacher and the student teacher shall assess the latter's readiness to assume teaching responsibilities and the cooperating teacher shall have authority for determining in what degrees those responsibilities shall be assumed.

8. Explanation of school personnel responsibilities

The superintendent, or his designee, shall arrange for other school personnel, including teachers, principal, remedial instructors, guidance counselors, curriculum coordinator, school psychologist, school nurse, and school social worker to assist the cooperating teacher in providing an understanding of their roles for the student teacher.

9. Materials and supplies

a. Upon request, a cooperating teacher shall be provided with a duplicate copy of all instructional materials and teacher manuals for use by the student teacher assigned.

b. Upon request a cooperating teacher shall be provided with those school records which he feels necessary for an understanding of the field experience by the student teacher. Upon completion of the field experience, the cooperating teacher shall arrange with the student teacher for the return of all such copies of student records.

10. Eligibility to teach

A student teacher shall be permitted to teach unsupervised only in areas for which he will be eligible for certification and only after the approval of the cooperating teacher.

11. Substitution

In accordance with State regulations, a student teacher can not be used as a substitute teacher.

12. Information for cooperating teachers

The superintendent or his designee, shall arrange for each cooperating teacher to be provided in writing with the following in accordance with college procedures:

a. Information about the student teacher, such as his background, college record, interests, talents, and special problems of which the cooperating teacher and school administrator should be aware.

b. Information about the college program and the college's expectations and requirements for student teachers.

c. Specific information about the date the student will begin the assignment, when he will complete the assignment, and holidays or special events which affect the student teacher's attendance.

13. Orientation

Prior to the commencement of the student teaching experience, the superintendent shall request that the prospective student teacher visit the School District for appropriate orientation by the superintendent or his designee and the cooperating teacher.

Article XXVII, *Protection of Teachers, Students and Property*

A. Unsafe and Hazardous Conditions

Teachers shall not be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety, or well-being.

as B.7.). Some of these may be sound administrative practice; they are not, however, appropriate topics for negotiations.

Employee safety is a required topic for negotiations. A board must be very careful, however, to avoid vague language when making contractual commitments in this area. For example,

©1983 NJSBA

B. Procedure for Hazardous Conditions

When the Association makes a determination on a district-wide basis or a Faculty Council, as heretofore established in ARTICLE XXII, determines on a building basis that conditions are unsafe or hazardous for the health, safety, or well-being of students and teachers. the following conditions shall be established and exist until rescinded by the same body:

1. Meetings

In the event of any disorder or disruption in the regular school program, the Board, superintendent or affected building principals shall meet with the Association immediately on request of the Association to develop mutually acceptable programs to guarantee the safety of students, teachers, and property.

2. Association representatives

Representatives of the Association shall be allowed free access to buildings and teachers until conditions are no longer unsafe and hazardous.

3. Closings

The Association shall be consulted and be allowed to submit recommendations for consideration before any judgment is made to open or close school.

4. Unauthorized visitors

During said unsafe and hazardous period, persons not employed by the School District shall not be allowed into any school without the knowledge and permission of the senior faculty representative in a building. This shall apply to students visiting a school other than where they are assigned.

C. Reasonable Force

As specified in 18A:6-1. a teacher may, within the scope of his employment, use and apply such amount of force as is reasonable and necessary: To quell a disturbance threatening physical injury to others; to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil; for the purpose of self-defense; and for the protection of persons or property.

D. Action before Board or Commissioner

Whenever any action is brought against a teacher before the Board or before the Commissioner of Education of the State of New Jersey which may affect his

the phrase "unsafe or hazardous conditions or to perform tasks which endanger health, safety or well-being" appears impossible to define precisely. Does the lack of air-conditioning endanger a teacher's well-being? The teacher may think so, and grievances arising from such a matter may result in arbitration awards that require the expenditure of vast sums of money.

On a proposal such as this, the union should be pressed to explain exactly what their specific concerns are. If these can be addressed through contract language, both parties may be satisfed to do so. If the union response is as vague as this clause, a board should not concede on this matter.

B.1. This clause, to the extent it does not deal with **teachers'** safety and personal property, is non-negotiable. PERC has ruled that a public employer can refuse to meet or negotiate with employee representatives **during an emergency situation,** even though employees' terms and conditions were affected. **Camden,** PERC No. 80-3. The Faculty Council clause is actually found in ARTICLE XVIII.

B.3. Other rulings, noted in the commentary accompanying ARTICLE XI, hold that the implementation of a management decision cannot be held up by a requirement to meet with employees or unions prior to the implementation. See **New Milford,** PERC No. 81-36.

B.4. This is an illegal delegation of managerial authority to a labor union.

employment or salary status, the Board of Education shall reimburse him for the cost of his defense if the action is dismissed or results in a final decision in favor of the teacher.

E. Assault

1. Legal assistance

The Board shall give full support including legal and other assistance for any assault upon the teacher while acting in the discharge of his duties.

2. Leave

When absence arises out of or from such assault or injury, the teacher shall be entitled to full salary and other benefits for the period of such absence but shall not forfeit any sick leave or personal leave.

3. Reimbursement for personal property damage

The Board shall reimburse teachers for the reasonable cost of any clothing or other personal property damaged or destroyed as a result of an assault suffered by a teacher while the teacher was acting in the discharge of his duties within the scope of his employment.

4. Medical

The Board shall reimburse a teacher for the cost of medical, surgical or hospital services incurred as the result of any injury sustained in the course of his employment.

5. Workmen's Compensation

Benefits derived under this or subsequent Agreements shall continue beyond the period of any Workmen's Compensation until the complete recovery of any teacher when absence arises out of or from assault or injury.

F. Reporting Assaults

1. Principal or immediate superior

Teachers shall immediately report cases of assault suffered by them in connection with their employment to their principal or other immediate superior.

2. Superintendent

Such notification shall be immediately forwarded to the superintendent who shall comply with any reasonable request from the teacher for information in the possession of the superintendent relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the teacher, the police, and the courts.

G. Nurse

A school nurse shall be scheduled to be in each building for the entire school day as heretofore defined in ARTICLE VII. Section A of this Agreement.

Article XXVIII, *Maintenance of Classroom Control and Discipline*

A. Definition of Responsibilities

A definition of the duties and responsibilites of all administrators, coordinators, supervisors and other personnel pertaining to student behavior shall be reduced to writing by the superintendent and presented to each teacher at the start of each school year.

B. Special Assistance

When, in the judgment of a teacher, a student requires the attention of the principal, assistant principal, a counselor, psychologist, physician or other special-

E.1., 3. and 4. would be acceptable if they stipulated that such injury or legal proceeding was not determined to be the fault of the teacher.

E.2. and 5. seem to obligate a board to full salary and benefits **for the life of the employee,** far too costly a debt for most boards to incur.

F.2. Access to confidential student records is not a term and condition of employment and, therefore, is an illegal topic.

Paragraph G. deals with a demand that requires the board to negotiate the scheduling of nurses. The board must insist that such a question is a matter for it to determine unilaterally. It represents a basic policy question and is not an item to be included in the terms and conditions of employment. **N.J.S.A.** 18A:40-1 **et seq.** prescribes the board's duties with respect to scheduling school nurses.

The board must retain the ultimate responsibility for the maintenance of control and discipline in the classroom. This is not an item that can be delegated to committees and it should not be negotiated.

The board may want to arrange for the use of a committee to provide suggestions and advice on this topic.

ist, he shall so inform his principal or immediate superior. The principal or immediate superior shall arrange as soon as possible for a conference among himself, the teacher, and an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution.

C. Disruptive Students

When, in the judgment of a teacher, a student is by his behavior seriously disrupting the instructional program to the detriment of other students, the teacher may exclude the student from the classroom and refer him to the principal. In such cases the principal shall arrange as soon as possible, and under normal circumstances not later than the conclusion of the following school day, a conference among himself, the teacher and possibly an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution. If the teacher in question objects to the proposed readmission of said student to the classroom, the matter shall, within twenty-four (24) hours after the decision by the principal, be referred to an ad hoc committee consisting of two (2) members appointed by the principal, two (2) members appointed by the teacher and a fifth (5th) member, who shall act as chairman, appointed by the other four (4) members. Said committee shall consult with the teacher, the principal, and other appropriate professional and/or lay persons, including the student's parents and/or guardians, and shall render a final decision in the matter within ( ) days after the conclusion of such consultation.

D. Student Behavior Committee

As soon as possible after the execution of this Agreement, a joint Student Behavior Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established to develop appropriate guidelines to be used by teachers in handling disruptive students and to develop constructive programs for disruptive students whose presence in regular classes represent unusual problems for the regular learning process. Recommendations shall be submitted to the Instructional Council established pursuant to ARTICLE XXIII of this Agreement.

E. Building Procedures

An appropriate student disciplinary procedure shall be developed for each school building by its Liaison Committee (established pursuant to ARTICLE XXII of this Agreement). Said procedure shall be submitted to the building faculty for approval prior to its implementation.

F. Expanded Involvement

Nothing in this ARTICLE pertaining to the development of guidelines and procedures by the Student Behavior Committee or each school's Liaison Committee shall be interpreted to prevent these committees from consulting or adding to their number such additional teachers, professional advisors, parents, students, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes.

Article XXIX, *Insurance Protection*

A. Full Health-Care Coverage

As of the beginning of the 19 - school year, the Board shall provide the health-care insurance protection designated below. The Board shall pay the full premium for each teacher and in cases where appropriate for family-plan insurance coverage.

1. Provisions of coverage

Provisions of the health-care insurance program shall be detailed in master policies and contracts agreed upon by the Board and the Association and shall include:

a. Hospital room and board and miscellaneous costs
b. Out-patient benefits
c. Laboratory fees, diagnostic expenses, and therapy treatments
d. Maternity costs
e. Surgical costs
f. Major-medical coverage

2. Carrier(s)

The health insurance carrier(s) shall be for the basic hospitalization and medical-surgical coverage, and for the major-medical coverage.

3. Special program(s) and carrier(s)

In addition to the above stated program, provision shall be made to provide the

The Liaison Committee article is actually ARTICLE XVIII; the Instructional Council article is found at ARTICLE XIX.

PERC has recently ruled that the choice of the insurance carrier is **not** a required topic for negotiations, as long as the level of benefits is substantially equivalent. **City of Newark,** PERC No. 82-5.

More and more boards are negotiating on the cost of a benefit, rather than the benefit itself. For example, a board may agree to pay $50 per employee toward a prescription drug insurance plan; employees pay the rest of the insurance premium. This approach has numerous benefits:

- it prevents the board's automatic assumption of increases in insurance costs;
- it makes employees aware that

following health programs:

a. Prescription drug costs
b. Dental care
c. Optical care

The Board shall make full payment for the services listed above in this paragraph with a carrier(s) approved by the Association.

4. Complete annual coverage

For each teacher who remains in the employ of the Board for the full school year, the Board shall make payment of insurance premiums to provide insurance coverage for the full twelve (12) month period commencing September 1st and ending August 31st. When necessary, payment of premiums in behalf of the teacher shall be made retroactively or prospectively to assure uninterrupted participation and coverage.

B. Retirement Coverage

The Board shall provide for continuance of health-care insurance after retirement on the terms detailed in the master policies and contracts agreed upon by the Board and the Association.

C. Description to Teachers

The Board shall provide to each teacher a description of the health-care insurance coverage provided under this ARTICLE, no later than the beginning of the 19 - school year, which shall include a clear description of conditions and limits of coverage as listed above.

D. Washington National Meetings

The superintendent shall permit representatives of the NJEA Washington National Income Protection Plan to meet with teachers for the purpose of enrolling new members and permitting present members to adjust their coverages at faculty meetings on a district or building level at the request of the Association. Requests for such meetings shall be made no more than once a year. It is agreed that the Washington National representative shall be permitted a minimum of twenty (20) minutes for the meeting.

Article XXX, *Personal and Academic Freedom*

A. Personal

The personal life of a teacher is not an appropriate concern or attention of the Board except as it may directly prevent the teacher from performing properly his assigned functions during the workday.

B. Citizenship

Teachers shall be entitled to full rights of citizenship, and no religious or political activities of any teacher or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such teacher, providing said activities do not violate any local, state or federal law.

C. Academic

The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the School District, and they acknowledge the fundamental need to protect teachers from any censorship or restraint which might interfere with their obligation to pursue truth in the performance of their teaching functions. Accordingly, they agree as follows:

such benefits are substantial cost items;

- it may make the union interested in dropping a demand for a new insurance benefit;
- and, if the board agrees in subsequent negotiations to increase its share of the premium cost, it does so as a concession to the union, in exchange for which a concession should be obtained from the union.

If it is agreed that Washington National representatives may conduct meetings in the school, such meetings should not constitute one of the meetings provided elsewhere in the contract. There is no reason why it should constitute a "faculty meeting." Because Washington National is, in effect, a subsidiary of NEA, it is advisable to allow meetings only outside of the school day. Certainly, teachers should not be compensated for their voluntary attendance at this meeting.

While it should not be the board's intention to in any way deprive a teacher of any of the rights that an individual, or an individual in the capacity of a teacher, is provided as a matter of law, this type of clause in the contract would be an inappropriate matter for the purpose of collective negotiations.

It should be noted, however, that the provision of this demand contained in paragraph A, which states that the personal life of a teacher is not an appropriate concern of the board, is not a sufficiently clear statement. The board must have a definite interest in the personal life of a teacher as it might bear upon his or her suitability for teaching in the district.

1. Controversial material

Teachers shall be guaranteed full freedom in classroom presentations and discussions and may introduce politically, religiously or otherwise controversial material, provided only that said material is relevant to the course content.

2. Personal opinion

In performing their teaching functions, teachers shall be guaranteed full freedom in expressing their personal opinions on all matters relevant to the course content, provided, however, that when they do so they shall make every effort to indicate that they are speaking personally and not on behalf of the school, its administration, or the Board.

3. Censorship

Teachers shall not be censored or restrained in the performance of their teaching functions on the ground that the material discussed and/or opinions expressed are distasteful or embarrassing to those in authority in the school system or detrimental to school or school system public relations.

Article XXXI, *Books and Other Instructional Materials and Supplies*

A. Purpose

The Board shall allocate sufficient funds to provide for the purchase and/or replacement of textbooks, library books, instructional materials, supplies and equipment of sufficient quality and quantity to enable teachers to properly fulfill their teaching responsibilities. Specifically, the Board agrees that during the 19 - school year it shall provide the following allocations:

1. Per pupil costs

Funds for instructional materials and supplies shall be increased by not less than ($) dollar(s) per pupil for kindergarten through sixth grade and by not less than ($) dollar(s) per pupil for seventh grade through twelfth grade. Teachers purchasing materials and/or supplies with the advance approval of their principal or immediate superior shall be reimbursed upon submission of an appropriate receipt of purchase.

2. Home instruction

($) dollars per home instructor shall be used to purchase additional materials and supplies necessary in carrying out the instructional program. Such teachers shall be reimbursed up to said amount upon submission of an appropriate receipt of purchase.

3. Petty cash

A Petty Cash Fund shall be established in each building for use in purchasing incidental supplies for classroom instructional use. Expenditures from this fund shall be at the discretion of the teacher. The teacher shall be reimbursed upon presentation of a paid receipt for such expenditures to the principal, up to the following maximums.

a. Secondary schools— ($) dollars per teacher per month

b. Elementary schools— ($) dollars per teacher per month

B. Review and Evaluation of Books and Materials

1. Procedure

An improved procedure for reviewing and evaluating books and other instructional materials and supplies shall be instituted as soon as possible after the effective date of this Agreement. Said procedure shall provide, among other things, for the following:

a. A separate committee shall be established to make recommendations for each subject area;
b. School-based teachers shall constitute a majority of each such committee;
c. A subject supervisor shall not be able to override the recommendations of such committee;
d. The recommendations of each such committee shall be published and distributed to all schools; and
e. The distinction between books adopted for system-wide use and those for

C.1. has been ruled to be a non-negotiable topic. **New Milford,** PERC No. 81-36. PERC did not address the constitutional questions that were raised. It is clear, however, that the constitutional freedoms of public employees can and have been protected outside the confines of the negotiated agreement.

In June, 1978, PERC ruled that teachers had no right to use students as messengers for union notices to parents. The decision would seem to apply to classroom discussion of the district labor disputes which are initiated by the teacher.

A. Procedures for reimbursement for purchase of equipment and supplies are negotiable. But the decision as to how much money to make available for reimbursement, and what materials are needed to enable teachers to fulfill their responsibilities, is not negotiable.

B. It is not clear if PERC's ruling regarding Board-Teacher Liaison Committees will extend to such things as textbook selection committees. Certainly, B.1.c. is illegal; such committees cannot interfere whatsoever with management prerogatives.

which there is freedom for individual school and/or teacher choice shall clearly be defined.

2. Textbook Policy Committee

A Textbook Policy Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established as soon as practicable to work out the mechanics of the aforesaid procedure so that it may be implemented by the beginning of the 19 - school year.

3. Pay and/or released time

Teachers serving on committees organized pursuant to this ARTICLE shall be provided with scheduled released time for this purpose and/or paid at the rate specfified in ARTICLE VII, Section A, paragraph 4 of this Agreement, for time spent in excess of the regularly scheduled in-school work year or workday.

C. Standards for Materials

C.1. The criteria for textbook selection listed here may be excellent but, because this clause does not relate to a term and condition of employment, it is a prohibited subject for negotiations.

1. Criteria

Instructional materials used in the School District shall reflect the multi-ethnic nature of our society and shall evidence a sensitivity to prejudice, to stereotypes, and to materials offensive to minority groups, as measured by the following criteria:

a. The suggestion, by omission or commission or by over- or under-emphasis that any racial, religious, or ethnic segment of the population is more or less capable or more or less important than any other in the mainstream of American life is to be avoided.

b. Opportunities for full, fair, accurate, and balanced treatment of minority groups should be utilized.

c. Recognition of minority groups by frequent placement in positions of leadership and centrality is necessary.

d. Both male and female members of minority groups should be depicted in situations which exhibit them as worthy examples of mature American citizens.

e. Attention should be given to the presentation of fully integrated human groupings and settings indicating equal status.

f. The group representation of individuals should be clearly apparent and the exclusive utilization of Caucasian facial features avoided in such representation where appropriate.

g. Broad-ranging, well-planned, and comprehensive materials which represent the contribution and achievements of minority groups in art, science, history, literature, and all other aspects of life and culture should be apparent in the design of materials.

h. Life in contemporary urban environments, as well as rural and suburban environments, should be pictured.

2. Materials Center

A materials center shall be maintained and charged with the responsibility of seeking multi-ethnic materials related to study units being taught. The center shall also develop and maintain a current list of resource centers and persons within and outside the community.

D. Testing

D. This is an illegal subject.

Achievement tests which are to be used by the School District for district, school, subject, or grade-wide purposes shall be approved in advance by the Instructional Council as heretofore established in ARTICLE XXIII of this Agreement. The Instructional Council shall consider the kind and type of test, the use to which a test is to be put, and the dissemination of the test results and any interpretation of those results.

Article XXXII, *Deduction from Salary*

A. is basically a restatement of law.

A. Association Payroll Dues Deduction

1. The Board agrees to deduct from the salaries of its teachers dues for the Association, the County Education Association, the New Jersey Education Association or the National Education Association, as said teachers individually and voluntarily authorize the Board to deduct. Such deductions shall be made in compliance with Chapter 233 N.J. Public Laws of 1969

©1983 NJSBA

(NJSA 52:14-15.9e) and under rules established by the State Department of Education. Said monies together with current records of any corrections shall be transmitted to such person as may from time to time be designated by the Association by the 15th of each month following the monthly pay period in which deductions were made. The person designated shall disburse such monies to the appropriate association or associations.

2. Each of the associations named above shall certify to the Board, in writing, the current rate of its membership dues. Any association which shall change the rate of its membership dues shall give the Board written notice prior to the effective date of such change.

B. Local, State and National Services

The Board agrees to deduct from teachers' salaries money for local, state and/or national association services and programs as said teachers individually and voluntarily authorize the Board to deduct and to transmit the monies promptly to such association or associations. Any teacher may have such deductions discontinued at any time upon sixty (60) days written notice to the Board and the appropriate association.

Article XXXIII, *Miscellaneous Provisions*

A. Nondiscrimination

The Board agrees that there shall be no discrimination, and that all practices, procedures, and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer, or discipline of teachers or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, marital status, age or sexual orientation.

B. Board Policy

This Agreement constitutes Board policy for the term of said Agreement, and the Board shall carry out the commitments contained herein and give them full force and effect as Board policy.

C. Savings Clause

Except as this agreement shall otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement to employees covered by this Agreement as established by the administrative procedures and practices in force on said date, shall continue to be so applicable during the terms of this agreement. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, or otherwise detract from any teacher benefit existing prior to its effective date.

A. The Supreme Court has held that grievances alleging racial discrimination are not arbitrable. **Teaneck, 94 N.J.** 9 (1983). Such complaints may only be pursued through state or federal agencies.

Paragraph B. is a superfluous paragraph that simply states that the board must carry out the commitments contained in the contract and gives them the effect of board policy. It is, of course, the intention of the board, as well as the association, to adhere to the provisions of the contract.

C. This is commonly called a "past practice" clause. Such a clause can be extremely detrimental to the board. If included in the contract, the result could be to freeze in place all existing "rights" and "benefits" provided anywhere in the district, whether through board policy, administrative regulation, district practice, or even the practices of individual administrators. The union seeking such a clause should be asked to specify which rights and benefits it seeks to guarantee by this clause. That question may result in a withdrawal of the demand, if the union is unable to describe any real concerns. On the other hand, the answer may convince the board of the danger of such a clause and result in a rejection of the proposal.

©1983 NJSBA

D. Separability

If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

D. This is a standard clause.

E. Compliance between Individual Contract and Master Agreement

Any individual contract or job description between the Board and an individual teacher, heretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract or job description contains any language inconsistent with this Agreement, this Agreement shall be controlling.

This is a standard clause. The board has the authority to establish job descriptions unilaterally, but they must be in compliance with the terms of the negotiated agreement.

F. Printing Agreement

Copies of this Agreement shall be printed at the expense of the Board after agreement with the Association on format within thirty (30) days after the Agreement is signed. The Agreement shall be presented to all teachers now employed, hereafter employed, or considered for employment by the Board.

G. Notice

Whenever any notice is required to be given by either of the parties to this Agreement to the other, pursuant to the provision(s) of this Agreement, either party shall do so by telegram or registered letter at the following addresses:

1. If by Association, to Board at
   (address)
2. If by Board, to Association at
   (address)

F. The cost of printing the agreement is usually shared by the board and the union. It is absurd to agree to give a copy of the agreement to every teacher being considered for employment by the board.

Article XXXIV, *Duration of Agreement*

A. Duration Period

This Agreement shall be effective as of **[Date of Implementation]** and shall continue in effect until **[Date of expiration]**,

[NOTE—In Agreements which extend for more than one (1) year and negotiations over fiscal matters are to be conducted annually, insert the phrase:

subject to the Association's right to negotiate each annual budget with negotiations commencing no later than October 1 of each year, under procedures defined in ARTICLE II, and . . .]

subject to the Association's right to negotiate over a successor Agreement as provided in ARTICLE II. This Agreement shall not be extended orally, and it is expressly understood that it shall expire on the date indicated, unless it is extended in writing.

B. Status of Incorporation

Option 1 [For Incorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by their respective presidents, attested by their respective secretaries, and their corporate seals to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By	By
Its President	Its President
By	By
Its Secretary	Its Secretary

Option 2 [For Unincorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by president and secretary and the Board has caused this Agreement to be signed by its president, attested by its secretary and its corporate seal to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By	By
Its President	Its President
By	By
Its Secretary	Its Secretary

If the contract is going to exist for a particular period of time, but certain specific items, e.g., salaries, are to be negotiated during the remainder of the contract, it should be specifically so stated in a reopener clause. The Sample Agreement language on a reopener clause refers to "each annual **budget,**" which is totally inappropriate. If it stated "over salary" or "over economic benefits" it would be more acceptable. October 1 is too early for salary negotiations to occur in most districts. PERC's regulations direct boards to commence negotiations 120 days prior to school budget elections, or approximately December 7. This date provides more than enough time to negotiate a successor agreement.

©1983 NJSBA

Article , *Representation Fee*

A. Purpose of Fee

If an employee* does not become a member of the Association during any membership year (i.e., from September 1 to the following August 31), which is covered in whole or in part by this Agreement, said employee will be required to pay a representation fee to the Association for that membership year. The purpose of this fee will be to offset the employee's per capita cost of services rendered by the Association as majority representative.

*Use the appropriate term to designate all members included in the bargaining unit.

B. Amount of Fee

1. Notification

Prior to the beginning of each membership year, the Association will notify the Board, in writing, of the amount of the regular membership dues, initiation fees and assessments charged by the Association to its own members for that membership year. The representation fee to be paid by non-members will be equal to 85% of that amount.

The first sentence suggests that, even if an agreement containing an agency shop provision were in effect for only a portion of the school year, a non-member employee would have to pay a representation fee for the entire school year.

In fact, use of the term "membership year," defined as September 1 to August 31, implies that a contract that is effective on July 1, 1983 and which contains an agency shop clause may be entitling the union to collect agency shop fees for the **previous school year.** Since the membership year extends to August 31, 1983, the contract with the agency shop clause covers that membership year "in part," and retroactive payment may be due.

To avoid this, boards should insist that representation fees be deducted **prospectively only,** beginning either with July 1 or September 1.

The second sentence describes the purpose of the fee, but also should cite, in the interests of thoroughness, those excluded union activities for which fee payment is not required, i.e., partisan, political activities or causes or ideological positions only incidentally related to terms and conditions of employment, and all benefits available only to members of the majority representative.

PERC has determined that the size of the representation fee is a matter to be determined by the union, subject to appeal by the employee to the appropriate bodies (see below), and is therefore a non-negotiable topic. **Woodbridge,** PERC No. 81-131. The preferred language in the last sentence is "will not exceed 85% . . ." since the actual fee will vary among different unions according to what percent of their dues are used for collective bargaining purposes in any year covered by the representation fee clause.

The contract should also state:
The Association will certify to the Board prior to the start of each membership year that the amount of the representation fee to be assessed does not exceed 85% of dues, fees and assessments and does not include any amount of dues,

©1983 NJSBA

fees and assessments that are 1) expended for partisan, political or ideological activities or causes that are only incidentally related to terms and conditions of employment or 2) applied toward the cost of benefits available only to members of the majority representative.

2. Legal Maximum

In order adequately to offset the per capita cost of services rendered by the Association as majority representative, the representation fee should be equal in amount to the regular membership dues, initiation fees and assessments charged by the Association to its own members, and the representation fee has been set at 85% of that amount solely because that is the maximum presently allowed by law. If the law is changed in this regard, the amount of the representation fee automatically will be increased to the maximum, said increase to become effective as of the beginning of the Association membership year immediately following the effective date of the change.

This clause contains a contingency provision, which would change the maximum amount of representation fee payment from 85% to some higher figure. It is recommended that school boards **not** agree to this language because it is based upon an anticipated change in the law. Such "if/then" clauses have been found to be illegal by PERC. **Hoboken,** PERC No. 82-7.

C. Deduction and Transmission of Fee

1. Notification

Once during each membership year covered in whole or in part by this agreement, the Association will submit to the Board a list of those employees who have not become members of the Association for the then current membership year. The Board will deduct from the salaries of such employees, (in accordance with paragraph 2 below), the full amount of the representation fee and promptly will transmit the amount so deducted to the Association.

C. 477, P.L. 1979, requires that no representation fee deduction can be made unless the majority representative first establishes a demand and return system. This system provides that a non-union member may appeal the amount of the representation fee assessed against him/her. The union must provide the non-member with a full and fair hearing, and has the burden of proof in justifying the amount of the fee. Non-members who are dissatisfied with the outcome of their appeal at the local level may appeal to a three-member Tripartite State Board. Language should be negotiated requiring the majority representative to provide evidence of the existence of this system to the public employer and to all non-union members, before any deductions are made.

2. Payroll Deduction Schedule

The Board will deduct the representation fee in equal installments, as nearly as possible, from the paychecks paid to each employee on the aforesaid list during the remainder of the membership year in question. The deductions will begin with the first paycheck paid;

(a) 10 days after receipt of the aforesaid list by the Board; or

(b) 30 days after the employee begins his or her employment in a bargaining unit position, unless the employee previously served in a bargaining unit position and continued in the employ of the Board in a non-bargaining unit position or was on layoff, in which event the deductions will begin with the first paycheck paid 10 days after the resumption of the employee's employment in a bargaining unit position, whichever is later.

The law establishes a minimum period that must elapse before non-union employees who enter the bargaining unit for the first time or who re-enter the bargaining unit must pay a representation fee. School boards could seek to negotiate periods longer than the thirty and ten day minimum periods stated in this section.

3. Termination of Employment

If an employee who is required to pay a representation fee terminates his or her employment with the Board before the Association has received the full amount of the representation fee to which it is entitled under this Article, the Board will

This should be agreed to only if the board must deduct the unpaid portion of the union dues from the last paycheck paid to union members deduct the unpaid portion of the fee from the last paycheck paid to said employee during the membership year in question.

4. Mechanics

Except as otherwise provided in this Article, the mechanics for the deduction of representation fees and the transmission of such fees to the Association will, as nearly as possible, be the same as those used for the deduction and transmission of regular membership dues to the Association.

5. Changes

The Association will notify the Board in writing, of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than 10 days after the Board received said notice.

6. New Employees

On or about the last day of each month, beginning with the month this agreement becomes effective, the Board will submit to the Association, a list of all employees who began their employment in a bargaining unit position during the preceding 30 day period. The list will include names, job titles and dates of employment for all such employees.

D. Indemnification and Save Harmless Provision

1. Liability

The Association agrees to indemnify and hold the Board harmless against any liability which may arise by reason of any action taken by the Board in complying with the provisions of this Article, provided that:

(a) the Board gives the Association timely notice in writing of any claim, demand, suit or other form of liability in regard to which it will seek to implement this paragraph; and

(b) if the Association so requests in writing, the Board will surrender to it full responsibility for the defense of such claim, demand, suit or other form of liability and will cooperate fully with the Association in gathering evidence, securing witnesses, and in all other aspects of said defense.

2. Exception

It is expressly understood that paragraph 1 above will not apply to any claim, demand, suit or other form of liability which may arise as a result of any type of willful misconduct by the Board or the Board's imperfect execution of the obligations imposed upon it by this Article.

during the membership year in question.

This "Indemnification" language has been offered by teacher unions in some districts as an assurance that the board will not incur any cost if sued by an irate employee forced to pay a representation fee. The language, however, seems to lack the clarity the board should demand; e.g., the meaning of paragraph 2 is ambiguous enough to make the entire provision meaningless. Additionally, the clause asks the board to surrender all responsibility for its own defense to the association, a delegation that most boards would find unacceptable.

The board should insist that it be fully indemnified against financial liability arising out of, or by reason of, any action taken or not taken in conformance with an agency shop clause. Such a clause might read as follows:

> *The union shall indemnify and hold the employer harmless against any and all claims, demands, suits and other forms of liability, including liability for reasonable counsel fees and other legal costs and expenses, that may arise out of, or by reason of any action taken or not taken by the employer in conformance with this provision.*

©1983 NJSBA